

LAW OFFICES

# ROSS & HARDIES

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

150 NORTH MICHIGAN AVENUE

CHICAGO, ILLINOIS 60601-7567

312-558-1000

TELECOPIER  
312-750-8600

RECORDATION NO. 18363-B

FILED 1425

PARK AVENUE TOWER  
65 EAST 55TH STREET  
NEW YORK, NEW YORK 10022-3219  
212-421-5555

580 HOWARD AVENUE  
SOMERSET, NEW JERSEY 08873  
908-563-2700

SIXTEENTH STREET, N.W.  
WASHINGTON, D.C. 20006-4103  
202-296-8600

August 12, 1993

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 18363-A

FILED 1425

Via Hand Delivery

AUG 13 1993 1.50PM

INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

RECORDATION NO. 18363  
FILED 1425

AUG 13 1993 1.50PM

INTERSTATE COMMERCE COMMISSION

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) is one original executed copy and two photostatic copies of the following:

Primary Document:

Loan and Security Agreement dated as of August 10, 1993 from Allied Enterprises, Inc. (Debtor) to Deutsche Credit Corporation (Secured Party) and evidencing a security interest in 69 gondola railcars described on Exhibit B to the Loan and Security Agreement.

Secondary Document:

Memorandum of Lease Agreement dated as of August 10, 1993 between Allied Enterprises, Inc. (Lessor) and Arkansas & Missouri Railroad Company (Lessee) and memorializing a Lease Agreement relating to the 69 gondola railcars described in Schedule A to the Memorandum of Lease Agreement.

08/12/93

LAWPDOS\SLICHTER  
35822-1.LTR

*Michael B. Stearns*

Mr. Sidney L. Strickland, Jr.  
August 12, 1993  
Page 2

Secondary Document: Assignment of Lease and Rents dated as of August 10, 1993 from Allied Enterprises, Inc. (Debtor) to Deutsche Credit Corporation (Secured Party) and relating to the 69 gondola railcars described in Exhibit A to the Assignment of Lease and Rents, which Assignment of Lease and Rents has been acknowledged pursuant to the Acknowledgement and Notice of Assignment executed by Arkansas & Missouri Railroad Company.

The names and addresses of the parties to the enclosed documents are:

Secured Party:	Deutsche Credit Corporation 2333 Waukegan Road Deerfield, IL 60015
Debtor/Lessor:	Allied Enterprises, Inc. 107 North Commercial St. Springfield, AR 72764
Lessee:	Arkansas & Missouri Railroad Company 107 North Commercial St. Springfield, AR 72764

A description of the railroad equipment covered by the enclosed documents is appended to this letter and is contained as an exhibit or schedule to each of the above-referenced documents.

Enclosed are three checks, each in the amount of \$16.00, payable to the order of the Interstate Commerce Commission, covering the required recordation fee for the above-described documents.

Please return the stamped original and one stamped photostatic copy of the enclosed documents and the stamped

Mr. Sidney L. Strickland, Jr.  
August 12, 1993  
Page 3

photostatic copy of this letter to Susan G. Lichtenfeld at Ross & Hardies, 150 North Michigan Avenue, Suite 2500, Chicago, IL 60601 or the bearer of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "S G Lichtenfeld", followed by a horizontal line.

Susan G. Lichtenfeld

SGL:z  
Encls.

cc: Nick Calabrese  
Robert W. Kleinman

**EXHIBIT B TO LOAN AND SECURITY AGREEMENT  
BY AND BETWEEN DEUTSCHE CREDIT CORPORATION AND ALLIED ENTERPRISES, INC. \***

PLE	47000	PLE	47062
PLE	47002	PLE	47063
PLE	47004	PLE	47074
PLE	47005	PLE	47078
PLE	47006	PLE	47080
PLE	47007	PLE	47081
PLE	47010	PLE	47083
PLE	47012	PLE	47085
PLE	47013	PLE	47086
PLE	47014	PLE	47087
PLE	47015	PLE	47088
PLE	47018	PLE	47091
PLE	47019	PLE	47093
PLE	47021	PLE	47095
PLE	47022	PLE	47096
PLE	47023	PLE	47097
PLE	47024	PLE	47098
PLE	47026	PLE	47099
PLE	47028	PLE	47101
PLE	47031	PLE	47104
PLE	47032	PLE	47107
PLE	47033	PLE	47110
PLE	47037	PLE	47111
PLE	47038	PLE	47117
PLE	47040	PLE	47119
PLE	47042	PLE	47123
PLE	47045	PLE	47126
PLE	47046	PLE	47127
PLE	47047	PLE	47128
PLE	47048	PLE	47129
PLE	47049	PLE	47130
PLE	47052	PLE	47134
PLE	47054	PLE	47135
PLE	47055	PLE	47136
PLE	47058		

\* Subsequent to modification pursuant to agreement by East Railroad Services, Inc, New Castle, PA, these Railcars will bear Marks and Numbers A & M 900-969 but not necessarily to correspond to the order set forth above.

AUG 11 1993 1:50PM

INTERSTATE COMMERCE COMMISSION

Revised Draft  
8/9/93

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT ("Agreement") dated as of the 10<sup>th</sup> day of August, 1993 is by and between Allied Enterprises, Inc., a Delaware corporation ("Borrower") and DEUTSCHE CREDIT CORPORATION ("Lender").

WITNESSETH:

WHEREAS, Borrower has requested that Lender finance the purchase of up to Sixty-nine (69) used fifty-two (52) foot one hundred (100) ton gondola railroad cars (the "Railcars") and that Lender finance the cost of modifying the Railcars on the terms and conditions set forth herein;

WHEREAS, subject to the terms and conditions set forth herein, Lender will provide the financing requested by Borrower up to an amount equalling but not exceeding \$1,792,000.00 (the "Maximum Commitment Amount");

WHEREAS, the financing to be provided to Borrower hereunder by Lender will be done in two or more transactions, the first to accomplish acquisition of the Railcars (the "Acquisition Advance") and the subsequent transactions which shall number no more than three (3), to pay costs and expenses or reimburse costs and expenses to the Borrower for modification to the Railcars (the "Modification Advances");

WHEREAS, funds advanced as part of the Acquisition Advance will be advanced, pursuant to the terms and conditions hereof;

WHEREAS, funds advanced as part of the Modification Advance will be advanced, pursuant to the terms and conditions hereof, with the expectation that the Railcars will be leased to the Arkansas and Missouri Railroad Company ("A & M"), and that a collateral assignment of said lease will then be made to Lender;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

A. THE LOANS

A.1 The Loans. Subject to fulfillment of the conditions specified herein, Borrower agrees to borrow from Lender and Lender agrees to lend to Borrower, by way of the Acquisition Advance or the Modification Advance, the amounts hereinafter requested by Borrower, provided that the aggregate amount advanced, subject to the Maximum Commitment Amount, shall not exceed the following:

(i) The lesser of 80% of the purchase price of the Railcars as further outlined in the Purchase and Sale Agreement No. 1544 dated July 22, 1993,

by and between Borrower and NorRail, Inc. (hereinafter, the "Purchase and Sale Agreement") a copy of which is attached hereto as Exhibit A or 80% of their "as is" appraised value;

plus (ii) 80% of the total cost of modification of the Railcars. Provided, however, that in no event shall the sum of the foregoing be greater than the estimated fair market appraised value of the Railcars subsequent to their modification, which will be part of the appraisal of the Railcars performed, as required herein.

(1) The Acquisition Advance. The Acquisition Advance as set forth above, shall be the lesser of 80% of the purchase price under the Purchase and Sale Agreement or 80% of the Railcars' appraised value, provided each of the conditions as set forth herein is satisfied, including, but not limited to an appraisal of the Railcars, to enable Borrower to acquire an ownership, free and clear of all liens and encumbrances, in the Railcars, which are more fully identified in Exhibit B, attached hereto, and made a part hereof.

Following the purchase of the Railcars from NorRail, Inc. (the "Seller"), the Railcars shall be delivered by the Seller or by Borrower to East Railroad Services Corp., located in New Castle, PA (hereinafter, the "Rebuilder"), pursuant to a letter agreement which has been or will be entered into by Borrower with the Rebuilder (the "Rebuild Agreement") a copy of which is attached hereto as Exhibit C. It is anticipated the work to complete the modification will take no more than three months. Thereafter, pursuant to a lease agreement with A & M (the "A & M Lease and the "Lessee", respectively), the originals of which will be delivered and a collateral assignment of which shall be made to Lender, with all rights thereunder (the assignment of the A & M Lease will hereinafter be referred to as the "A & M Lease Assignment"), the Railcars will be delivered to and leased by Lessee in accordance with the terms thereunder. Borrower shall also deliver to Lender the Rebuild Agreement, and shall also make a collateral assignment to Lender of all of its rights thereunder.

(2) The Modification Advances. From time to time as the Railcars have been modified, pursuant to the Rebuild Agreement, the Borrower will request that Lender pay the Rebuilder directly or pay the Borrower any and all amounts due and owing for such modification, up to eighty percent (80%) of said costs, but in any event, subject to the limitation set forth above. Lender shall pay such amounts, subject to the conditions set forth in Section A.3, below. Furthermore, there will be a maximum of three (3) Modification Advances, the last of which shall occur no later than 150 days from the Acquisition Advance Closing, except that there may be a reasonable extension for the final Modification Advance Closing, in the event of a force majeure occurrence beyond the control of the Borrower and the Rebuilder.

(3) Promissory Notes for the Acquisition Advance and the Modification Advances. At the time of the Acquisition Advance and each Modification Advance, in consideration for such advances, Borrower will deliver to Lender its Promissory Note(s) in the form attached hereto as Exhibit D (the "Promissory Note" or "Promissory Notes") for amount(s) actually advanced to, for, or on behalf of Borrower in connection with this transaction, which will be secured by, among other things, the Railcars, as provided under this Loan and

Security Agreement and the Lease. The term of each Promissory Note shall be seventy-two (72) months, or, in the case of the Modification Advances, such lesser number of months as will cause the Promissory Notes to have the same maturity date. The rate of interest on the principal amount for each Promissory Note delivered by Borrower to Lender prior to August 14, 1993, shall be 7.59% per annum. The rate of interest on Promissory Notes delivered hereunder after August 14, 1993, shall be 7.59 percent, so long as Borrower pays to Lender on each funding date subsequent to August 14, 1993, an amount equal to (i) the unused portion of the Maximum Commitment Amount during the period from the later of the most recent funding hereunder, or if none, from August 14, 1993, to the Acquisition Advance Closing or Modification Advance Closing in question (the "Holding Period") multiplied by (ii) a monthly rate of interest, based upon a 30-day month, of one eighth of one percent (1/8 percent) for the number of days during the subject Holding Period. The terms and conditions of the Promissory Notes shall otherwise be as stated therein.

A.2 Conditions Precedent to Lender Making the Acquisition Advance. Lender shall make the Acquisition Advance to Borrower only in the event the following conditions are fulfilled to the satisfaction of Lender and its counsel:

(1) On or prior to the closing for the Acquisition Advance (hereinafter, the "Acquisition Advance Closing"), copies of the following documents shall have been delivered to each party hereto, with fully executed counterparts delivered to Lender:

- (a) this Agreement;
- (b) a certificate in the form attached hereto as Exhibit E, reflecting the purpose of the Acquisition Advance, and a request by Borrower to Lender for Lender to make the Acquisition Advance (hereinafter, the "Acquisition Advance Certificate"); and
- (c) the Promissory Note, in the form of Exhibit D, attached hereto.
- (d) a Pay Proceeds Letter, if applicable, in the form of Exhibit F, attached hereto.

(2) On or prior to the Acquisition Advance Closing, Lender shall have also received:

- (a) certified copies of the appropriate proceedings of the board of directors of Borrower with respect to this Agreement, the Rebuild Agreement, the Promissory Notes, and the other instruments contemplated herein and therein and to the execution, delivery and performance thereof by the respective parties;
- (b) certified copies of the corporate organizational documents of Borrower, including, but not limited to, certified copies of the by-laws thereof,
- (c) incumbency certificate of Borrower with respect to all of its duly elected officers in the form attached hereto

- as Exhibit G;
- (d) Closing Certificate of Borrower, in the form attached hereto as Exhibit H, certifying that the representations and warranties of Borrower contained herein and in any documents or certificate delivered pursuant hereto are true and correct on and as of the Acquisition Advance Closing with the same effect as though made on and as of the Acquisition Advance Closing, and that as of the Acquisition Advance Closing there is no default under the A & M Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default;
  - (e) evidence of filing of this Agreement and such other documents as Lender in its sole but not unreasonable discretion may require with the ICC pursuant to 49 U.S.C. §11303 including without limitation, the Memorandum of Lease Agreement, attached hereto as Exhibit X;
  - (f) evidence satisfactory to Lender that Borrower has good and marketable title to the Railcars identified in the Acquisition Advance Certificate delivered pursuant to A.2(1)(b) hereof and the lawful right to pledge a security interest in the same to Lender, free of all claims, liens, security interests and other encumbrances except Permitted Encumbrances (defined below);
  - (g) evidence satisfactory to Lender that the Railcars identified in the Acquisition Advance Certificate delivered under Subsection A.2(1)(b) hereof are free and clear of any and all leases, except as disclosed in Subsection A.2(2)(h) below;
  - (h) the original and all original counterparts of the A & M Lease, covering each Railcar identified in the Acquisition Advance Certificate delivered pursuant to Subsection A.2(1)(b), in the form attached hereto as Exhibit I;
  - (i) the A & M Lease Assignment, in the form attached hereto as Exhibit J, assigning to Lender, subject to the terms and conditions set forth therein, all rents and monies due Borrower under the A & M Lease pursuant to Article B hereof;
  - (j) an Acknowledgment and Notice of Assignment from the Lessee delivered pursuant to A.2(1)(i) hereof in substantially the form attached hereto as Exhibit K;
  - (k) a conformed copy of the Rebuild Agreement (Exhibit C);
  - (l) a collateral assignment of the Rebuild Agreement pursuant to Article B hereof in the form attached hereto as Exhibit L;
  - (m) an Acknowledgment and Notice of Assignment from the Rebuilder under the Rebuild Agreement in substantially the form attached hereto as Exhibit M;
  - (n) an acknowledgment from the Lessee regarding the covenant in Section A.7 hereof, which shall be part of Lessee's



Acknowledgement and Notice of Assignment, in A.2 (2) (j), above;

- (o) copies of the appraisals of the Railcars set forth on Exhibit B attached hereto;
- (p) the insurance certificate covering the Railcars attached hereto as Exhibit N;
- (q) Opinions of Counsel to Borrower in the forms attached hereto as Exhibit O, satisfactory to Lender;
- (r) such Uniform Commercial Code financing statement(s) as may be required by Lender, together with the Uniform Commercial Code searches showing no prior interest of any party in the Railcars or in any lease or other proceeds thereof;
- (s) a copy of the most recent audited financial statements of the Arkansas & Missouri Railroad Company Inc. and unaudited consolidating financial statements of Borrower for the most recent fiscal year, certified by an officer of Borrower, and such other interim, unaudited financial statements and information regarding Borrower as may be requested by Lender;
- (t) such other opinions, approvals, certificates, agreements or other documents as Lender may reasonably request.
- (u) evidence satisfactory to Lender in its reasonable discretion of the manufacture date of the Railcars.

(3) Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section A.2 including, without limitation, opinions of counsel or certificates of officers of Borrower, public officials and others, as Lender or its counsel may reasonably require to establish to its satisfaction the fulfillment of such conditions.

(4) Lender's obligation to make the advance hereunder (i) shall not be prohibited by any applicable law or governmental regulation, (ii) shall not subject Lender to any penalty, or in its reasonable judgment, other onerous conditions under or pursuant to any applicable law or governmental regulation, and (iii) shall be permitted by laws and regulations of the jurisdictions to which Lender is subject. If requested by Lender, Borrower shall have delivered to Lender factual certificates or other evidence reasonably available to Borrower, in form and substance satisfactory to Lender, to enable Lender to establish compliance with this condition, to the extent such compliance relates to the nature, condition, action or inaction of Borrower.

(5) For purposes of this Agreement, the term "Permitted Encumbrances" shall mean: (i) the interests of Nor Rail, Inc. and the Pittsburgh and Lake Erie Railroad in and to the Railcars, which interests shall be extinguished on or prior to the Acquisition Advance Closing; (ii) the security interest created by this Agreement; (iii) liens and taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of the Railcar or any part thereof or interest therein and so long as Borrower has provided Lender with a bond or other collateral security satisfactory to Lender in an amount not less than the amount of the lien; (iv)

undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended; and (v) interests arising under the A & M Lease, which by acknowledgment from the Lessee, shall be inferior to those interests of Lender for the term of this Agreement or the Promissory Notes, or any extension thereof.

**A.3 Conditions Precedent to Lender Making Modification Advances.** Lender shall make the Modification Advances to Borrower only in the event the following conditions are fulfilled to the satisfaction of Lender and its counsel:

(1) On or prior to the closing for each Modification Advance (hereinafter, the "Modification Advance Closing"), copies of the following documents shall have been delivered to each party hereto, with fully executed counterparts delivered to Lender:

- (a) a certificate, in the form attached hereto as Exhibit P, reflecting the purpose of the Modification Advance, and a request by Borrower to Lender for Lender to make the Modification Advance (hereinafter, the "Modification Advance Certificate");
- (b) the Promissory Note, in the form attached hereto as Exhibit D; and
- (c) a Pay Proceeds Letter, if applicable, substantially in the form of Exhibit F attached hereto (except for payee(s) which may be set forth therein).

(2) On or prior to each Modification Advance Closing, Lender shall have also received:

- (a) copies of invoice(s) to Borrower for the cost of materials and work completed in connection with the Railcars identified in the Acquisition Advance Certificate as the Railcars to be modified under the Rebuild Agreement, which invoices will relate to the advances being requested for the Modification Advance;
- (b) certificate and request, in the form attached hereto as Exhibit Q, signed by an authorized officer of Borrower and directed to Lender to the effect that:
  - (i) the amount set forth in the invoice(s) is due and owing by Borrower under the Rebuild Agreement and has not been included in a prior invoice;
  - (ii) all amounts which have been the subject of prior invoice(s) under the Rebuild Agreement have been paid in full;
  - (iii) Borrower is not in default with respect to any of its obligations under any of the Promissory Notes or this Agreement or of

the Rebuild Agreement, nor has any event occurred which, but for the lapse of time, or the giving notice, or both, would constitute such a default.

- (c) Waiver of all liens of the Rebuilder, in the form attached hereto as Exhibit R with respect to the materials provided or work performed in connection with the invoices described in Subsection A.3(2)(a), and waivers of all other mechanics' or materialmans' liens with respect to all other materials provided or work performed with respect to the Railcars.
- (d) Closing Certificate of Borrower in the form attached hereto as Exhibit S, certifying that the representations and warranties of Borrower contained herein in any document or certificate delivered pursuant hereto are true and correct on and as of the Modification Advance Closing with the same effect as though made on and as of each Modification Advance Closing, and that as of the Modification Advance Closing, there is no default under the A & M Lease, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default;
- (e) evidence satisfactory to Lender that Borrower has good and marketable title to the Railcars identified in the Modification Advance Certificate delivered pursuant to A.3(1)(a)(i) hereof and the lawful right to pledge a security interest in the same to Lender, free of all claims, liens, security interests and other encumbrances except for Permitted Encumbrances;
- (f) evidence satisfactory to Lender that the Railcars identified in the Modification Advance Certificate delivered pursuant to Subsection A.3(1)(a) hereof are free and clear of any and all leases except the A & M Lease;
- (g) the original and all original counterparts of the A & M Lease, if not previously delivered pursuant to Subsection A.2(2)(h);
- (h) evidence satisfactory to Lender that the A & M Lease is in full force and effect and has not been modified since delivery to Lender thereunder;
- (i) Certificate of Acceptance of Lessee in the form attached hereto as Exhibit T, with respect to the Railcars identified in the Modification Advance Certificate, delivered to Lender pursuant to A.3(1)(a) hereof;
- (j) an inspection prior to the first Modification Advance Closing, of the first five of the Railcars which have been modified pursuant to the Rebuild Agreement. Lender shall use its best efforts to perform such inspection within forty-eight (48) hours of modification of the Railcars described above, so long as it is promptly notified of said modification by Borrower. Subsequent to this first inspection, Lender shall have the right to further inspections as it reasonably deems necessary, with sufficient proper notice of its intent to inspect to the Borrower. In any event, from time, but no less frequently than immediately prior to each Modification Advance, Lender

shall receive from Rebuilder upon request from Borrower, Rebuilder's certificate of completion in the form attached hereto as Exhibit U, for all Railcars which have been modified pursuant to the Rebuild Agreement.

- (k) payment of the fee outlined in Section A.1(3), above;
- (l) waiver of all liens of the Rebuilder under the Rebuild Agreement, including all mechanics' or materialmen's liens; and
- (m) such other approvals, certificates, agreements or other documents as Lender may reasonably request.

(3) Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section A.3 including, without limitation, certificates of officers of Borrower, public officials and others, as Lender or its counsel may reasonably require to establish to their satisfaction the fulfillment of such conditions.

(4) Lender's obligation to make the loan (i) shall not be prohibited by any applicable law or governmental regulation, (ii) shall not subject Lender to any penalty or, in its reasonable judgment, other onerous conditions under or pursuant to applicable law or governmental regulation, and (iii) shall be permitted by the laws and regulations of the jurisdictions to which Lender is subject. If requested by Lender, Borrower shall have delivered to Lender factual certificates or other evidence reasonably available to Borrower, in form and substance satisfactory to Lender, to enable Lender to establish compliance with this condition, to the extent such compliance relates to the nature, condition, action or inaction of Borrower.

(5) Notwithstanding anything to the contrary contained herein, at such time as modification to the Railcars has been completed, and the Association of American Railroads (the "AAR") shall issue to Borrower a compliance certificate, or such notification that modification complies with AAR standards, Borrower shall deliver to Lender a copy thereof.

**A.4 Representations, Warranties and Covenants.** Borrower hereby makes the following representations, warranties, and covenants, each of which is true and correct on the date hereof and will be true and correct on the Acquisition Advance Closing, and each Modification Advance Closing except as expressly provided otherwise, hereunder, and each of which shall survive the Acquisition Advance Closing and each Modification Advance Closing, as the case may be.

(1) Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its property and carry on its business as currently conducted and is duly qualified to do business in such other jurisdictions in which the failure to so qualify would have a material adverse effect upon the financial condition of Borrower.

(2) Borrower is conducting its business in such a manner as to comply with all applicable laws and regulations of the United States of America, the several states and the District of Columbia and any subdivision of any

thereof wherein Borrower is doing business and of all governmental agencies and authorities of any thereof having jurisdiction in the premises where the failure to so comply would have a material adverse effect on the business, present or prospective, or the operations, property, assets or condition, financial or otherwise, of Borrower.

(3) Borrower has the full power and authority to execute, deliver and perform this Agreement, the Rebuild Agreement, all other documents referred to herein to which Borrower is a party and the Promissory Notes.

(4) This Agreement, the Rebuild Agreement and all other documents referred to herein to which Borrower is a party have each been duly authorized, executed and delivered by Borrower and assuming due authorization, execution and delivery by the other parties thereto constitute the legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(5) The Promissory Notes have been duly authorized by Borrower and, when executed and delivered by Borrower, shall constitute legal, valid and binding obligations of Borrower enforceable against it in accordance with the terms thereof.

(6) No authorization or approval or other action by, and no notice to filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Borrower of this Agreement, the Rebuild Agreement, the Promissory Notes and all other documents referred to herein to which borrower is a party, except for the filing of this Agreement with the ICC pursuant to 49 U.S.C §11303 and the filing of Uniform Commercial Code financing statements in the appropriate state and local offices in which such financing statements have been filed.

(7) Neither the execution, delivery or performance by Borrower of this Agreement, the Rebuild Agreement, the Promissory Notes and all other documents referred to herein to which Borrower is a party, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of Borrower or any order, writ, injunction or decree of any court or governmental authority against Borrower or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument to which Borrower is a party or by which it or any of its properties is bound, or constitutes or will constitute a default hereunder or will result in the imposition of any lien not permitted hereby upon any of its properties.

(8) As of the Acquisition Advance Closing, and each Modification Advance Closing, Borrower has good, and lawful title to the Railcars and the good and lawful right to pledge the same to Lender, free from all claims, liens, security interests and other encumbrances except for Permitted Encumbrances; upon filing of this Agreement with the ICC and filing of applicable Uniform Commercial Code financing statements with the appropriate state and local filing offices, Lender will have a valid first priority, perfected lien on and first priority,

perfected security interest in the Railcars and all leases and proceeds thereof superior to the rights of all third persons; and all of the Railcars are, or will be after modification, in good condition and repair and adequate for the uses to which they are being put.

(9) Neither Borrower nor anyone acting on its behalf, has directly or indirectly offered the Promissory Notes, or similar securities relating to the Railcars, for sale to, or solicited any offer to acquire any of the same from, anyone other than Lender.

(10) The execution and delivery by Borrower of this Agreement, the Rebuild Agreement and the Promissory Notes will not involve any prohibited transaction within the meaning of ERISA or Section 4975 of the Internal Revenue Code of 1986.

(11) This Agreement will be, on or prior to the Acquisition Advance Closing, duly filed with the ICC pursuant to 49 U.S.C. §11303.

(12) Except for the filings referred to in paragraph (11) hereof, as of the Acquisition Advance Closing and each Modification Advance Closing, there are no security agreements, financing statements or notices signed by Borrower on file in any appropriate public office naming Borrower as debtor and purporting to create or perfect a security interest in (a) the rentals, revenues and payments to be received by Borrower under any leases relating to such Railcars being financed on such date or (b) the Railcars being financed on such date, and no other filing, depositing or recordation is necessary (A) for the protection of the title of Borrower to the Railcars in any State of the United States of America or the District of Columbia or (B) for the perfection of the lien and security interest of Lender under this Agreement as against creditors of and purchasers from Borrower.

(13) All statements contained in any certificate, document, financial statement or other instrument delivered by or on behalf of Borrower pursuant to or in connection with this Agreement shall be deemed to constitute representations and warranties under Section A.4 of this Agreement. All of Borrower's representations and warranties under this Agreement shall survive the execution and delivery of the same, any investigation by Lender and the issuance of the Promissory Notes.

(14) The audited financial statement of Borrower for each fiscal year will be certified as to completeness and accuracy by the chief executive officer or chief financial officer of Borrower and will be submitted to Lender not later than 120 days after the end of each of Borrower's fiscal years, and quarterly financial statements of Borrower, also certified as to completeness and accuracy by one of the officers described above, will be submitted to Lender not later than 90 days after the end of each fiscal quarter of Borrower.

(15) The principal place of business of Borrower as of the date hereof is 107 N. Commercial Street, Springdale, AR 72764.

(16) Borrower shall not sell, lease, assign or otherwise transfer or dispose of all or substantially all of its assets without Lender's prior

written consent, which consent shall not be unreasonably withheld or delayed.

(17) The Quarterly Covenant Compliance Certificate, in the form of Exhibit V hereto, will be completed by Borrower and certified as to completeness and accuracy by the President or Chief Financial Officer of Borrower and will be submitted to Lender not later than 90 days after the end of each fiscal quarter of Borrower, and the Annual Covenant Compliance Certificate, in the form of Exhibit W hereto, will be completed by Borrower's independent auditors and certified as to completeness and accuracy by such auditors and will be submitted to Lender not later than 120 days after the end of each fiscal year of Borrower.

(18) Borrower agrees that during the terms of the Promissory Notes, it will provide and maintain insurance with respect to the Railcars, in such amounts and against such risks as are customary in the industry, and that such insurance shall be satisfactory in all respects to Lender in its reasonably exercised discretion, with Lender named as an additional insured and loss payee.

(19) Borrower agrees that during the terms of the Promissory Notes it will keep and maintain in good operating condition and repair and make all necessary replacements and renewals to the Railcars in accordance with industry standards so that the operating efficiency thereof shall at all times be maintained and preserved.

A.5 Borrower's Direct Liability. All obligations of Borrower under the Promissory Notes are recourse obligations of Borrower and Borrower shall, therefore, be directly liable for any default under this Agreement and the Promissory Notes and shall also be directly liable for any breach of any of its representations, warranties or covenants contained herein. Nothing contained herein shall, however, affect the right of the Lender to proceed directly against the Railcars for the full and complete payment of the indebtedness created hereby.

A.6 Mandatory Prepayments. In the event of a casualty loss with respect to any Railcar or the termination of the A & M Lease for whatever reason with respect to any Railcar, there shall be due and payable hereunder and under the Promissory Note issued with respect to such Railcar a mandatory prepayment of principal in an amount equal to the portion of the then outstanding principal balance of such Promissory Note represented by such Railcar together with all accrued and unpaid interest thereon, and upon such prepayment, a new amortization schedule shall be prepared by Lender to reflect such prepayment; provided, however, that if Borrower provides a suitable substitute Railcar to replace the Railcar that suffers a casualty loss then, so long as there has been no Event of Default and the substitute railcar is acceptable to Lender in its exercise of reasonable discretion, no prepayment shall be required and the parties shall execute such documents as are necessary to substitute the replacement cars for the destroyed Railcars under this Agreement and all related documents; provided further, that if Borrower provides a suitable substitute lease to replace the terminated A & M Lease and the terms and conditions of such lease, as well as the Lessee thereunder are acceptable to Lender, the substitute lease shall thereafter be included as an acceptable substitute of collateral and no mandatory prepayment shall be required. A mandatory prepayment made under this Section A.6 will not be subject to the prepayment penalties set forth in the Promissory Note. For

purposes of this section A.6, the term "casualty loss" shall mean damage to or destruction of a Railcar such that the cost of repair or restoration would exceed 100 percent of the value of the restored or repaired car.

A.7 Financial Covenants: Borrower and the Lessee shall maintain, for the term of this Agreement, and for the entire term of the Promissory Notes, a Minimum Combined Equity of one million, six hundred thousand U.S. dollars (\$1,600,000.00). An acknowledgment from Lessee acknowledging this covenant shall be delivered by either the Borrower or the Lessee.

For the purposes of this Section A.7 the following term shall have the following meaning:

Minimum Combined Equity - shall mean the excess of total assets over total liabilities, total assets and total liabilities each to be determined in accordance with generally accepted accounting principles consistently applied excluding, however, from the determination of total assets: (i) all assets which would be classified as intangible assets under generally accepted accounting principles including, without limitation, goodwill, patents, trademarks, trade names, copyrights, franchises, and research and development expenses except pre-paid expenses; (ii) assets located outside of the United States other than rolling stock, temporarily located outside of the U.S., in rail freight service, in Canada or Mexico; (iii) deferred charges, treasury stock and sinking funds; (iv) all reserves not already deducted from assets; (v) the value of any minority interest in subsidiaries; and (vi) the revaluation and write-up of assets occurring after the Acquisition Advance Closing.

## B. SECURITY

### B.1 Grant of Security.

(1) In order to secure the prompt payment of the principal and interest on the Promissory Notes, (whether now or hereafter outstanding) and of all other moneys payable and to be payable to Lender under this Agreement (collectively the "Indebtedness") and the timely and faithful performance and observance by Borrower of all of the agreements, covenants and provisions contained in this Agreement, and the Promissory Notes, Borrower has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest, and does hereby grant, convey, pledge, sell, mortgage, assign, transfer and set over a lien on and continuing security interest, unto Lender in (i) all of Borrower's right, title and interest including any interest hereafter acquired in every Railcar identified on Exhibit B hereof, including any railcar hereafter added to Exhibit B by way of supplement or amendment; (ii) Borrower's interest in accessions, accessories, equipment, appurtenances and replacement and added parts appertaining or attached to any of the Railcars owned or hereinafter acquired and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any of said Railcars (the Railcars and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any of said Railcars described in items (i) and (ii) above being hereinafter sometimes collectively referred to herein as the "Security Equipment"), together with all the rents, issues, income, profits, proceeds and avails therefrom and the proceeds thereof; (iii) all proceeds and



all present and future evidences of rights to payment, (including, without limitation, insurance and indemnity payments) due or to become due to Borrower on account of the lease, sale, loss or other disposition of the Security Equipment; (iv) all rights, claims and causes of action, which Borrower may have under the Rebuild Agreement or against the manufacturer, the Rebuilder or Seller (or any component thereof) or any other party, by contract or otherwise, in respect of any defect in the Security Equipment; (v) the documents referred to in Section A.2(2)(h) and Section A.2(2)(k) and Section A.3(2)(e) hereof, and all other leases, bills of sales or other similar documents, agreements and instruments relating to the Railcars (collectively, the "Documentary Security" or "Security Documentation"), together with all of Borrower's estate, right, title, interest, claims and demands in, to and under such documents, agreements and instruments including all extensions of any of the terms thereof, together with all rights, powers, privileges, options, and other benefits of Borrower including without limitation the right to receive notices, give consents, exercise any election or option, declare defaults and demand payments thereunder, and (vi) all rent, damages and other moneys from time to time payable to or receivable by Borrower under the Documentary Security (such Security Equipment, Documentary Security, proceeds, rights, claims and causes of action described in items (i) through (vi) above being herein sometimes collectively called the "Collateral"), to have and to hold all and every part of the Collateral unto Lender, and its successors and assigns, for its and their own use and benefit forever.

(2) PROVIDED FURTHER, that it is expressly understood and agreed that the security interests hereby granted Lender are continuing security interests and will not be deemed to have been extinguished or satisfied until the Indebtedness is paid in full.

(3) PROVIDED FURTHER, and these presents are on the condition that, if Borrower, or its successors or assigns shall pay or cause to be paid to Lender all of the Indebtedness in accordance with its terms, as provided in this Agreement and the Promissory Notes and shall well and faithfully perform and observe all of the agreements, covenants, and provisions hereof and thereof at the time and in the manner specified, then all rights herein assigned to Lender shall cease and terminate, all estate, right, title and interest of Lender in and to the Collateral shall revert to Borrower and this Agreement and rights and powers granted herein and hereby shall cease to be binding and shall be of no further force and effect.

(4) PROVIDED FURTHER, that, subject to the terms and provisions hereof and unless otherwise stated herein, Borrower may retain possession (other than the Documentary Security now or hereafter delivered by Borrower to Lender), use and enjoyment of the Collateral, and the exercise of Borrower's rights under the Documentary Security as long as no default shall have occurred and be continuing.

The rights hereby assigned as security for the obligations of the Borrower under this Agreement include, but are not limited to (i) the right to cause the Rebuilder to perform the Rebuild Agreement to which it is a party for the benefit of Lender or its assigns; (ii) the right to re-assign the Rebuild Agreement; (iii) the right to have a nominee of the Borrower or the Lender or any

other assignee perform the Rebuild Agreement; (iv) the right to make demand directly under the Rebuild Agreement in accordance with the terms thereof; and the right to initiate, prosecute and maintain legal proceedings directly under the Rebuild Agreement, and to compel performance by such parties of any of their respective obligations contained in the Rebuild Agreement, all without resulting in the assumption of any obligations of the Borrower under the Rebuild Agreement, any other assignee or any nominees, except such obligations which are expressly assumed in writing by the Lender, any other assignee or any nominee; provided, however, that the rights provided for herein may only be exercised upon default by Borrower.

B.2 Lender as Agent Subject to Section B.1 hereof, Borrower hereby appoints Lender, and its successors and assigns, the true and lawful attorney of Borrower, irrevocably and with full power of substitution, in the name of Borrower or otherwise, to demand, receive, compromise, sue for, and give acquittance for, any and all rentals, profits, moneys and claims for money due and to become due under the A & M Lease or otherwise arising out of this Article B, to endorse any checks or other instruments or order in connection therewith, to make all waivers and agreements and to file any claims or take any actions or institute any proceedings with respect thereto which Lender may deem reasonably necessary or advisable, exercisable at any time on or after the occurrence of any Event of Default set forth in Article C of this Agreement. Anything herein contained to the contrary notwithstanding, neither Lender nor its nominee or assignee shall have any obligation or liability by reason of or arising out of this Article B to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amount to which it may be entitled at any time or times by virtue of this Article B.

B.3 Perfecting Security. Borrower hereby represents, warrants and covenants that as of the Acquisition Advance Closing and each Modification Advance Closing (and after giving effect to any filings which Lender has advised Borrower it has previously made) all recordings and filings shall have been made which are necessary or appropriate to perfect Lender's interest in the Collateral, including, without limitation, recordings and filings with the ICC and filings of such Uniform Commercial Code financing statements reasonably deemed necessary by Lender with the appropriate state and local offices, and that no other filings, recordings, depositing or giving of notice is necessary in order to protect the rights of Lender in and to the Collateral. Borrower shall, from time to time and at its own expense, promptly execute, acknowledge, witness, deliver and file and/or record, or procure the execution, acknowledgment, witnessing, delivery and filing and/or recordation of, such documents or instruments, and shall take or cause to be taken such other actions, as Lender may reasonably request for the perfection against Borrower and all third parties whomsoever of the security interest created by this Article B, of the rights and powers herein granted to Lender and or the continuation and protection thereof and promptly give to Lender evidence satisfactory to Lender of such delivery and filing and/or recording. Without limiting the generality of the foregoing, Borrower shall from time to time and at any time execute, acknowledge, witness and deliver such financing and continuation statements, notices and additional security agreements, make such notations on its records and take such other action as Lender may reasonably request for the purpose of so perfecting,

maintaining and protecting such security interest of Lender, and shall cause this Agreement and each such financing and continuation statements, notices and additional security agreements to be filed or recorded in such manner and in such places as may be required by applicable law and as Lender may reasonably request for such purpose. Borrower hereby authorizes Lender to effect any filing or recording which Lender has requested pursuant to this Section B.3 without the signature of Borrower to the extent permitted by applicable law. The costs and expenses of Lender with respect to such actions shall be payable by Borrower on demand, as further outlined below.

**B.4 After-Acquired Property.** Any and all property described or referred to in Section B.1 hereof which is hereafter acquired shall, without any further conveyance, assignment or act to the on the part of Borrower or Lender, become and be subject security interest herein granted as fully and completely as though specifically described herein. Borrower shall, at its expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired.

**B.5 Usage.** So long as no Default shall have occurred and be continuing, Borrower shall be entitled to the possession and use of each Railcar wholly within the continental United States, Canada and Mexico in accordance with the terms of this Agreement. Use of Railcars shall be limited to modification under the Rebuild Agreement or use under the A & M Lease in accordance with its terms; no other use shall be permitted without the prior written consent of Lender which shall not be unreasonably withheld or delayed.

**B.6 Marking of Equipment.** Borrower shall, at its expense, cause each Railcar to be kept numbered with the identifying road number set forth in Exhibit B hereto, or in the case of any item not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such item, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Railcar, the words "Ownership Subject to a Security Agreement filed under the Interstate Commerce Act," or other appropriate markings approved in writing by Lender, with appropriate changes thereof in order to protect Lender's security interest in the Railcars and its rights under this Agreement. Borrower shall, at its expense, replace promptly any such markings which may be removed, defaced, obliterated or destroyed and shall not change the number of any Railcar except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Lender and filed, recorded and deposited by Borrower in all public offices where this Agreement shall have been filed, recorded and deposited.

**B.7 Registration of Collateral.** Lender, at Borrower's sole expense, shall register or cause to be registered all Railcars in accordance with any and all applicable federal, state, and local or railroad industry registration requirements, including, without limitation, any registration requirement of the AAR and the ICC or any of their successor organizations.

**B.8 Performance by Borrower.** Borrower represents and warrants that

(a) notwithstanding the assignment of the Documentary Security to Lender hereunder, Borrower will perform all of the covenants and conditions in the Documentary Security required to be complied with by it and (b) it has performed all obligations on its part to be performed on or prior to the date hereof and there has not occurred on or prior to the date hereof any default or event of default thereunder.

**B.9 - Performance by Lender.** The assignment of the Documentary Security to Lender hereunder is made only as security, and, therefore, shall not subject Lender to, or transfer, or pass, or in any way affect or modify, the liability of Borrower thereunder, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all obligations of Borrower to other parties thereunder shall be and remain enforceable by such parties, and their respective successors and assigns, against, and only against, Borrower. Nevertheless, Lender may, at any time and from time to time at its option, upon prior written notice to Borrower, perform any act which is undertaken by Borrower to be performed by Borrower under the Documentary Security or hereunder, but which Borrower shall fail to perform, and, in such case, may take any other action which Lender may deem necessary for the maintenance, preservation or protection of its security interest in the Collateral. All moneys advanced and all expenses (including reasonable legal fees) incurred by Lender in connection with such action together with interest at the interest rate described above shall be repaid by Borrower to Lender upon demand, and shall be secured hereby as provided herein.

**B.10 Protection of Security.** Borrower shall not:

(1) permit any of the Collateral to be levied upon under legal process or to fall under any other lien or encumbrance of whatever nature arising as a result of claims against Borrower, except as otherwise permitted herein.

(2) except with the prior written consent of Lender, which shall not be unreasonably withheld or delayed, and upon the terms and conditions, if any, specified in such consent, sell, assign (including by virtue of assignments by operation of law), mortgage, pledge or otherwise transfer or encumber any of the Collateral, except as contemplated herein, or take any action which would permit any party other than Lender to perfect any security interest in the Collateral, whether for purchase money or otherwise.

**B.11 Amendments to the A & M Lease.** Borrower hereby represents and warrants that it has not, and covenants that it shall not, as long as this Agreement shall remain in effect, except with the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed, and upon the terms and conditions, if any, specified in such consent, enter into any agreement amending, supplementing or terminating the A & M Lease or any other lease relating to the Railcars permitted by Lender.

**B.12 Indemnity for Acts of Borrower.** Borrower covenants and agrees with Lender that in any suit, proceeding or action brought or taken by Lender under the Documentary Security, or this Agreement, Borrower will save, indemnify and keep Lender harmless from and against all expense (including reasonable legal

fees), loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of any other party thereto, or their respective successors or assigns, arising out of a breach by Borrower of any obligation thereunder or arising out of any other indebtedness or liability at any time owing to any other party thereto, or their respective successors or assigns. Any and all such obligations of Borrower shall be and remain enforceable against and only against Borrower.

B.13 Notices under the A & M Lease or the Rebuild Agreement Relating to the Railcars. Borrower shall cause copies of all notices received or sent by it in connection with the A & M Lease or the Rebuild Agreement relating to the Railcars to be promptly delivered to Lender at Lender's address below. Lender will give Borrower notice of any claim, of which Lender has actual knowledge, by the Lessee, or its successors or assigns, under the A & M Lease relating to the Railcars or any party to the Rebuild Agreement against Borrower which if successful, would result in Borrower liability under Section B.12 hereof, and will permit Borrower to intervene in any such proceedings.

B.14 Taxes. Borrower will pay all taxes in connection with the issuance, sale or delivery of the Promissory Notes and the execution and delivery of this Agreement and any other agreements and instrument contemplated hereby and any modification of the Promissory Notes, this Agreement or such other agreements and instruments and will save Lender harmless, without limitation as to time, against any and all liabilities with respect to all such taxes. Borrower will also pay all other taxes, assessments or charges which may be levied on the Promissory Notes or interest thereon, except any income tax imposed under the laws of the United States of America, or any state thereof, or of any foreign country, and will save Lender harmless, without respect to all such taxes, assessments or charges. The obligations of the Debtor under this Section B.14 shall survive the payment or prepayment of the Notes and the termination of this Agreement.

B.15 Disclaimer by Lender. Lender makes no representations or warranties with respect to the Collateral or any part thereof; Lender shall not be chargeable with any obligations or liabilities of Borrower with respect thereto; and Lender shall have no liability or obligation arising out of any such claims, known or unknown, with respect to the Collateral.

## C. DEFAULT

C.1 Defaults. The following events are defaults ("Events of Default" or "Defaults") hereunder:

(1) Borrower shall fail to pay an installment of the principal of or interest on the Promissory Notes within ten (10) days of the date on which the same shall be due and payable, whether at the due date thereof, by acceleration, as part of a prepayment or otherwise.

(2) Borrower shall default in performance of its obligations under this Agreement or any other Agreement between Borrower and Lender, and such default shall continue for thirty (30) days after written notice thereof to Borrower from Lender.

(3) Any representation or warranty on the part of Borrower made herein or in any report, certificate, financial or other statement furnished in connection with this Agreement or the transactions contemplated herein shall prove to have been false or misleading in any material respect when made. Provided however, that if Lender deems the false or misleading representation or warranty to have been unintentional, then Borrower shall have thirty (30) days from discovery by Lender and notification thereof to Borrower in which to cure such false or misleading representation or warranty.

(4) Borrower shall fail to pay, when due, any obligation for the payment of money incurred or assumed by Borrower (including without limitation obligations under capitalized leases, conditional sale agreements and the like) or shall fail to observe or perform any covenant or agreement in any document creating such obligation for the payment of money, if the effect of such failure is to cause any such obligations to become due prior to its stated maturity.

(5) Any claim, lien or charge shall be asserted against or levied or imposed upon the Collateral which is prior to or on a parity with the security interest granted hereunder, and such claim, lien or charge shall not be discharged or removed, or bonded against to the reasonable satisfaction of Lender.

(6) Borrower shall (i) file, or consent to the filing against it of a petition for relief under any bankruptcy or insolvency laws, (ii) make an assignment for the benefit of creditors, (iii) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over Borrower or a substantial part of its property, or (iv) take corporate action for the purpose of any of the foregoing.

(7) A court having jurisdiction over Borrower or its property shall enter a decree or order in respect of Borrower or such property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or official with similar powers over Borrower or any such property, or shall order the winding-up or liquidation of the affairs of Borrower, and such order or decree shall continue in effect for a period of sixty (60) consecutive days.

(8) The sale, lease, assignment or other transfer or disposition of substantially all of the common stock of Borrower or substantially all of the assets of Borrower without Lender's prior written consent, which consent shall not be unreasonable withheld or delayed.

## **C.2 Effect of a Default.**

(1) Remedies. Upon the occurrence of any Default and at any time thereafter so long as the same shall be continuing, but subject always to any mandatory requirements of applicable law then in effect, Lender may, at its option, do any one or more or all of the following acts as Lender in its sole and complete discretion may then elect:

- (a) by written notice to Borrower declare the entire principal amount of the Promissory Notes and any other notes ("Other Notes") executed by Borrower in favor of Lender and any other amounts payable hereunder or under any other Agreement between Borrower and Lender to be due and payable, forthwith, whereupon the Promissory Notes and the Other Notes shall become due and payable, both as to principal and interest without presentment, demand or protest of any kind, all of which are hereby expressly waived, anything contained herein or in the Promissory Notes or the Other Notes to the contrary notwithstanding, and subject at all times to the recourse provisions of the Promissory Notes or the Other Notes;
- (b) exercise all rights and remedies of Borrower under the Security Documentation and Borrower shall have no further rights thereunder until the security interest granted hereunder reverts to Borrower;
- (c) institute legal proceedings to foreclose upon and against the security interest granted herein to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any of the Collateral or from Borrower personally;
- (d) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any of the Collateral;
- (e) institute legal proceedings for the appointment of a receiver or receivers pending foreclosure hereunder or the sale of any of the Collateral under the order of a court of competent jurisdiction or under other legal process;
- (f) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof or render it unusable, and, without being responsible for loss or damage, hold, store and keep idle, or operate, lease or otherwise use or permit the use of the same or any part thereof for

if and to the extent the Default results from a breach by Borrower of any representation, warranty or covenant of Borrower contained herein, institute legal proceedings against Borrower to enforce performance of the applicable covenant of Borrower or to recover damages for the breach of any such representation, warranty

(i)

earnings and all other sums due and to become due pursuant to subsections (f) or (g) of this Section C.2(1) from any party whomsoever, accounting only for net earnings arising after charging against all receipts from the use of or sale of the collateral, all reasonable costs and expenses of, and damages or losses by reason of, such use or sale power;

(h)

personally, or by agents or attorneys, enter into and upon any premises wherein the collateral or any part thereof may then be located, and take possession of all or any part thereof with or without process of law and without being responsible for loss or damage and sell or dispose of all or any part of the same, free from any and all claims of Borrower or of any other party claiming by, through or under Borrower at law, in equity or otherwise, at one or more public or private sales, in such place or places, at such time or times and upon such terms as Lender may determine, in a commercially reasonable manner with or without any previous demand on or notice to Borrower or advertisement of any such sale or other disposal, and for the aforesaid purposes, all other notice of sale, advertisement and demand and any right or equity of redemption otherwise required by, or available to Borrower under, applicable law, are hereby waived by Borrower to the fullest extent permitted by applicable law; the power of sale hereunder shall not be exhausted by one or more sales, and Lender may from time to time adjourn any sale to be made hereunder;

(g)

such time and upon such terms as Lender may determine, in a commercially reasonable manner;



or covenant; and

- (j) exercise any other right, power, privilege or remedy which may be available to a secured party under the Uniform Commercial Code or any other applicable law.

(2) Notice. If Lender must give prior notice to Borrower of any of the foregoing acts, Borrower hereby covenants and agrees that a notice sent to it in writing by certified mail, return receipt requested, at least ten (10) business days before the date of any such act (or such longer period as may be required by applicable law), at its address provided hereunder shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time and place of any public sale hereunder and the time after which any private sale or other intended disposition is to be made hereunder.

(3) Application of Proceeds. The proceeds from the sale of the Collateral pursuant to any of the provisions of this Section C.2 shall be applied by Lender as follows:

- (a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder by Lender, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;
- (b) Second, to the payment to Lender of the amounts of principal and accrued interest unpaid on the Notes; and in case such proceeds shall be insufficient to pay in full the amount unpaid on the Promissory Notes, then ratably according to the aggregate of such principal and the accrued and unpaid interest, if any, with application on each Promissory Note to be made, first, to the unpaid interest thereof, and thereafter to the unpaid principal thereof; and
- (c) Third, to the payment of the surplus, if any, to Borrower, its successors and assigns, or to whosoever may be lawfully entitled to receive the same.

C.3 Waiver by Borrower. To the fullest extent that it may lawfully so agree, Borrower shall not at any time insist upon, claim, plead, or take any benefit or advantage of, any appraisal, valuation, stay, extension, moratorium,

redemption or any similar law now or hereafter in force in order to prevent, delay or hinder the enforcement of this Agreement or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to Section C.2 above; and Borrower, for itself and all who may claim through it, as far as it or they now or hereafter lawfully may so do, hereby waives the benefit of all such laws and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose under this Agreement may order the sale of the Collateral as an entirety.

C.4 Right to Purchase Collateral. So long as Lender has provided Borrower with the Notice described in Section C.2(2), at any sale pursuant to Section C.2 hereof, Lender or its agent may, to the extent permitted by applicable law, bid for and, if Lender is the highest bidder, purchase the Collateral offered for sale, may use any claim for Indebtedness payable to it as a credit against the purchase price and, upon compliance in full with the terms of such sale, may hold, retain and dispose of such property without further accountability therefor to Borrower or any other party.

C.5 Cumulative Rights. Each right, power and remedy herein specifically granted to Lender or otherwise available to it shall be cumulative, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or otherwise; and each right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to time, as often and in such order as may be deemed expedient by Lender in its sole and complete discretion; and the exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy; provided, however, that nothing in this Agreement shall be construed as granting Lender the right to recover more than the amount of the Indebtedness and its expenses as provided hereunder and such other amounts as may be recoverable under applicable laws. No delay or omission by Lender in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any Default on the part of Borrower or an acquiescence therein. No waiver by Lender of any breach or Default of or by Borrower under this Agreement shall be deemed to be a waiver of any other or similar, previous or subsequent breach or Default.

C.6 Rights Under Security Documentation. Notwithstanding any of the provisions of this Agreement to the contrary, neither Borrower nor Lender shall, in the absence of a default under the Security Documentation, take any action contrary to the rights of Borrower under the Security Documentation except in accordance with the provisions thereof.

#### D. MISCELLANEOUS

D.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns, provided that Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Lender.

D.2 Governing Law, Amendments and Counterparts. The terms of this Agreement and all rights obligations of the parties hereto shall be governed by the laws of the State of Illinois, without regard to its conflicts of law doctrine. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought. This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all of such counterparts shall together constitute a single instrument.

D.3 Fees and Expenses. Borrower agrees to pay all of Lender's reasonable out-of-pocket expenses relating to the negotiation, execution, delivery and preparation of this Agreement, the Notes, and any amendments hereto or thereto, including appraisal fees, fees related to the inspection(s) provided for in Section A.3(2)(j), above, recording costs and filing fees in respect of documents filed or recorded with the ICC, and the fees and disbursements of Ross & Hardies, special counsel for Lender, up to a maximum amount of \$10,000.00. Lender shall provide Borrower with an itemization for the expenses to be paid by Borrower under this section D.3.

D.4 Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and mailed or telegraphed or delivered:

if to Borrower, at its address at:

107 N. Commercial St.  
Springdale, AR 72764  
Attention: R.A. Hannold

with copies to:

Weiner, Brodsky, Sidman & Kider, P.C.  
1350 New York Avenue, N.W., Suite 800  
Washington, D.C. 20005  
Attention: Mark Sidman  
Fax: (202) 628-2011

and if to Lender, at its address at:

Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, IL 60015  
Attention: Legal Department-With copies  
to Credit Department  
Fax: (708) 948-5058

All such notices shall be deemed given upon personal delivery or facsimile transmission to an officer of Borrower or Lender, as the case may be, or forty-eight hours after deposit into the United States mail, certified mail, return receipt requested, postage prepaid, or twenty-four (24) hours after submitting to a national, overnight delivery service, prepaid, and, in each case, addressed to the address indicated herein for such party or to such other address

as such party may designate in writing pursuant hereto.

D.5 Survival. All warranties, representations, agreements and covenants made by Borrower herein or in any certificate or other instrument delivered by Borrower shall be considered to have been relied upon by Lender hereto and shall survive the consummation of the transactions contemplated hereby regardless of any investigation made by Lender or on behalf of Lender. All statements in any such certificate or other instrument shall constitute warranties and representations by Borrower to the same effect as if set forth herein.

D.6 Headings. The headings of the sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

D.7 Entire Agreement. This Agreement, together with the Promissory Notes, are intended by the parties as a final expression of their agreement and are intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, together with the Promissory Notes, supersedes all prior agreements and understanding between the parties with respect to such subject matter.

D.8 Attorney Fees. In any action or proceeding brought to enforce any provision of this Agreement or the Notes, or where any provision hereof or thereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' and disbursements fees in addition to any other available remedy.


D.9 Severability. In the event that any one or more of the provisions contained herein, or of the Promissory Notes or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that all of Lender's rights and privileges shall be enforceable to the fullest extent permitted by law.

D.10 Reproduction of Documents. This Agreement and all documents relating hereto including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) documents received on or as of the Acquisition Advance Closing or each Modification Advance Closing, and (c) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and such party may destroy any original document so reproduced, all at the cost of such party. The parties hereto agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

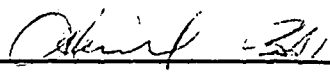
D.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Loan and Security Agreement as of the date first written above.

ALLIED ENTERPRISES, INC., BORROWER

By:   
Title: Pres

DEUTSCHE CREDIT CORPORATION, LENDER

By:   
Title: SVP

STATE OF ARKANSAS )  
COUNTY OF WASHINGTON )

SS.

On this 10th day of AUGUST, 1993, before me personally appeared J.A. HANDOLD to me personally known, who being by me duly sworn, says that he is the PRESIDENT of ALLIED, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Victoria R. Morgan  
Notary Public

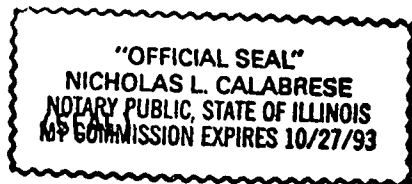
(SEAL)

My commission expires: 02-01-2002

STATE OF ILLINOIS )  
COUNTY OF LAKE )

SS.

On this 12th day of August, 1993, before me personally appeared Richard Scher / Cash Manager to me personally known, who being by me duly sworn, says that he is the CASH of DEUTSCHE CREDIT CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Nicholas L. Calabrese  
Notary Public

NorRail, Inc.  
308 12th Avenue South  
Buffalo, Minnesota 55313

**PURCHASE AND SALE AGREEMENT**

No. 1544

This Purchase and Sale Agreement (the "Agreement") is made as of this 22nd day of July 1993, by and between Allied Enterprises, Inc., a Delaware corporation (the "Buyer"), and NorRail, Inc. (the "Seller"). Seller has an option to acquire Railcar Equipment which Buyer desires to purchase and Seller desires to sell.

For and in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Sale of Equipment. Subject to the terms and conditions set forth herein, Seller agrees to sell, and Buyer agrees to purchase, the Railcar Equipment identified in Exhibit A (hereinafter referred to as the "Equipment"). All of the Equipment is stored in the locations set forth on Exhibit A, and shall remain in such locations until Buyer accepts the Equipment in accordance with section 2 below.

2. Purchase Price. The Purchase Price of the Equipment shall be \$22,000.00 per car (the "Purchase Price"). The Purchase Price shall be payable in U.S. funds upon acceptance of Buyer of the Equipment. So long as all of the representations and warranties of Seller as set forth in section 3 hereof are true and correct in all material respects, and Seller has performed its covenants hereunder, the acceptance of the Equipment shall take place August 16, 1993, or such earlier date as the parties agree upon (the "Closing Date"). By agreement between Buyer and The Pittsburgh and Lake Erie Railroad Co. ("PLE"), which is attached hereto as Exhibit B, Buyer has delivered to PLE a deposit for the purchase of the Equipment in the amount of \$70,000 (the "Deposit"). The Deposit shall be retained by PLE and shall be credited against the Purchase Price on the Closing Date. The Deposit shall be nonrefundable if Buyer fails to perform its obligations hereunder and all of Seller's representations are true and correct. In the event that the transaction that is the subject of this Agreement is not consummated for any reason other than Buyer's failure to perform its obligations hereunder, PLE has agreed that the full amount of the Deposit is to be remitted to Buyer by PLE's letter of July 21, 1993, a copy of which is attached. In the event that

Seller's representations or warranties concerning more than 10 of the rail cars that compose the Equipment are untrue or incorrect in any material respect as of the Closing Date, Buyer shall have the option to purchase the conforming portion of the Equipment or to terminate this Agreement; provided that, if Seller's representations and warranties concerning sixty (60) or more, but fewer than all, of the railcars are true and correct as of Closing Date, Buyer shall perform this Agreement as to the conforming Equipment. Until Buyer's acceptance of the Equipment, Seller shall bear all risk of loss, damage or destruction to the Equipment.

3. Representations and Warranties of Seller. Seller hereby represents, warrants and declares to and in favor of Buyer that:

- a. On the Closing Date(s), the Seller will hold title to the Equipment free and clear of all liens, claims, security interests, demands, encumbrances, privileges, pledges or other charges of every nature and kind whatsoever (excepting only any of the same as may have been created by Buyer). As verified by the letter attached hereto as Exhibit C, the current owner of the Equipment, PLE, has granted Seller an exclusive option to acquire the Equipment on or before the Closing Date, which option is and shall remain in full force and effect through the Closing Date.
- b. On the Closing Date(s), Seller shall be the lawful and rightful owner of the Equipment and shall have good right and title to sell the same to Buyer.
- c. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with the provisions hereof.
- d. On the Closing Date(s), the equipment will be in acceptable interchange condition, free of all FRA safety defects and suitable for loading commodities traditionally loaded in the same type of equipment.
- e. The equipment will be clean of all debris prior to the cars being made available to Buyer at their current locations.
- f. All transportation cost from the time Buyer accepts the cars at their current location will be for Buyer's account.



- g. Any and all property taxes payable with respect to the Equipment shall be paid in full as of the Closing Date, and Seller shall indemnify and hold harmless Buyer for any and all property taxes assessed on the Equipment for any and all periods prior to and through the Closing Date.

4. Representations and Warranties of Buyer. Buyer hereby represents, warrants and declares to and in favor of Seller that:

- a. This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with the provisions hereof.

5. Condition of Equipment. Buyer agrees the Equipment shall be sold to Buyer by Seller "as is, where is," without any other representations and warranties except as expressly set forth in this Agreement, whether written, oral or implied, and Seller shall not, by virtue of having sold the equipment herewith, be deemed to have made representation or warranty other than those expressly set forth herein as to the merchantability, fitness for a particular purpose, operability, design or condition of, or as to the quality of the material or workmanship in, the Equipment.

6. Closing. The Equipment shall be delivered to the possession of Buyer, at the locations set forth in Exhibit A, on the Closing Date(s). So long as Seller's representations and warranties as set forth in section 3 hereof are true and correct in all material respects as of the Closing Date(s), and Seller has performed all of its covenants hereunder, Seller shall deliver to Buyer a Bill of Sale in the form of Exhibit D hereto and a copy of the bill of sale from the PLE, and Buyer shall deliver to Seller the Purchase Price of the Equipment purchased hereunder less the \$70,000 Deposit paid by Buyer to the PLE. Closing of this Agreement is contingent upon Buyer's satisfactory inspection of the Equipment prior to the Closing Date or Buyer waiving the right of inspection.

7. Taxes. If any sales or use taxes are due on the sale or transfer of the Equipment pursuant to this Agreement, Buyer shall be liable for such taxes.

8. Survival of Representations and Warranties. The representations and warranties herein contained shall survive the

execution of the Agreement by the parties hereto and shall be deemed made as of the Closing Date.

9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors, administrators and assigns.

10. Severability. Any term, condition or provision of this Agreement which is or is deemed to be, void, prohibited or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom, and is ineffective to the extent of such avoidance, prohibition and unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof. Any such avoidance, prohibition and unenforceability in any jurisdiction does not invalidate or render unenforceable such term, condition and provision in any other jurisdiction.

11. Entire Agreement. This Agreement contains the entire agreement and the understanding between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, understandings and representations, oral and written. No modification, limitation or release of any of the terms and conditions contained herein shall be made except by mutual agreement to that effect in writing and signed by the parties hereto.

12. Governing Law. This Agreement SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF MINNESOTA AND SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF SUCH STATE. BUYER HEREBY CONSENTS THAT (a) BUYER CONSENTS TO THE JURISDICTION OF THE COURTS OF THE STATE OF MINNESOTA AND/OR FEDERAL DISTRICT COURT, FOURTH DIVISION, STATE OF MINNESOTA, EXCLUSIVELY, WITH RESPECT TO ALL ACTIONS COMMENCED BY IT WITH RESPECT TO ANY AND ALL MATTERS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THAT THE VENUE FOR THE PURPOSE OF SUCH SUITS SHALL BE HENNEPIN COUNTY, STATE OF MINNESOTA ONLY (b) ANY ACTION COMMENCED AGAINST BUYER BY SELLER UNDER THIS AGREEMENT, AT THE OPTION OF SELLER, BE COMMENCED IN THE STATE OF MINNESOTA AND BUYER HEREBY CONSENTS TO THE JURISDICTION OF SAID COURTS. TO THE EXTENT PERMITTED BY LAW, BUYER WAIVES TRIAL BY JURY IN ANY ACTION BY OR AGAINST SELLER HEREUNDER.

13. Notice. All communications under this Agreement shall be in writing or by a telecommunication devices capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including without limitation, by overnight mail and courier service, (b) five days

after the date on which it shall have been mailed by United States Postal Service (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such telecommunications device, when properly transmitted, addressed to each party at the following addresses:

If to Seller: NorRail, Inc.  
308 12th Avenue South  
Buffalo, MN 55313  
Attention: Russell S. Adams

If to Buyer: Allied Enterprises, Inc.  
107 North Commercial Street  
Springdale, AR 72764  
Attention: Randolph P. Hannold

14. Counterparts. This Agreement may be executed in any number of counterparts, but all of such counterparts together shall constitute one and the same agreement.

15. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience of reference only, and shall not affect in any way the meaning or interpretation of this Agreement.

16. Deadline. This Agreement shall automatically terminate if not executed by Buyer and returned to Seller on or before August 16, 1993.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the day and year set forth below.

BUYER:

Allied Enterprises, Inc.

By: Randolph P. Hannold

Title: Vice Pres & CMO

Date: 7/22/93

SELLER:

NorRail, Inc.

By: Russell S. Adams

Title: Vice President Sales

Date: 7/23/93

**EXHIBIT A****to****PURCHASE AND SALE AGREEMENT****No. 1544**

<u>Mfr.</u>	<u>Qty.</u>	<u>Type/Model</u>	<u>Ident.# &amp; Location</u>	<u>Description</u>
Greenville Steel Car	70	Gondolas	SEE BELOW	Steel Floors, 2,000 Cu. Ft. Capacity. 100 Ton
<u>P &amp; LE McKees Rocks, PA</u>			<u>Youngstown, OH</u>	
47104	47134		47006	47081
47028	47126		47000	47087
47074	47117		47024	47023
47015	47128		47022	47010
47093	47049		47130	47032
47040	47033		47038	47127
47031	47062		47002	47048
47012	47063		47058	47095
47078	47007		47110	47014
47055	47091		47045	47096
47037	47042		47004	47098
47054	47107		47086	47135
47136	47088		47026	47080
47119	47018		47083	47005
47047	47123		47097	47099
			47021	47101
			47019	47046
			47052	47013
			47085	47129
			47111	47121



# THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

G. E. NEUENSCHWANDER  
PRESIDENT AND  
CHIEF EXECUTIVE OFFICER

July 21, 1993

COMMERCE COURT  
FOUR STATION SQUARE  
PITTSBURGH, PA 15219-1199  
(412) 262-3900

## VIA FAX

Mr. R. P. Hannold  
Chief Mechanical Officer  
ARKANSAS & MISSOURI RAILROAD  
107 N. Commercial  
Springdale, Arkansas 72764

Dear Mr. Hannold:

You have advised that Allied Enterprises, Inc., a Delaware Corporation, (Allied) is party to a purchase and sale agreement, dated as of June 30, 1993, with NorRail, Inc. (the "Agreement"), under which Allied has agreed, subject to certain terms and conditions, to acquire seventy (70) gondolas currently owned by The Pittsburgh & Lake Erie Railroad Co. ("PLE") and with respect to which PLE has granted NorRail an exclusive option. The subject cars are identified on Attachment A, hereto (the "Equipment").

Pursuant to the understanding reached between Allied and PLE, PLE received from Allied on July 20, 1993 a wire transfer of \$70,000.00 (the Deposit) in consideration of PLE's agreement to extend NorRail's exclusive option to purchase the Equipment until 5 P.M., C.D.T. on August 16, 1993. It is agreed that the Deposit will be held by PLE subject to the following:

1. The exclusive option of NorRail to purchase the Equipment is extended until 5 P.M., C.D.T. on August 16, 1993.
2. PLE shall hold the Deposit through the closing date under the Agreement for the exclusive benefit of Allied, and shall be entitled to the Deposit only if (i) Allied and NorRail close on the purchase and sale of the Equipment, or (ii) Allied and NorRail do not close on the purchase and sale of the Equipment on or before August 16, 1993, solely as a result of Allied's failure to perform its obligations under the terms of the Agreement. In all other events, PLE shall return the full amount of the Deposit within two business days after receipt of written notice that the transaction did not close.

Mr. R. P. Hannold

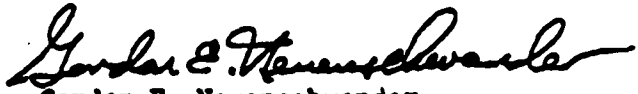
July 21, 1993

Page 2

3. PLE shall promptly notify Allied in the event that any facts or circumstances arise that would adversely affect PLE's ability or willingness to assign its interest in the Equipment to NorRail, in whole or in part, including without limitation (i) damage to or destruction of the Equipment, or any portion thereof, (ii) the invalidity or unenforceability of NorRail's exclusive option to acquire the Equipment or any portion thereof, or (iii) the existence of claims of third parties or orders of courts or administrative bodies, the validity of which would prevent the transfer of the Equipment to NorRail.
4. As of this date, PLE has 69 units of the Equipment in its possession on its property which are available for sale and delivery upon closing. The only unit that has not been returned from interchange service is PLE #47121. Upon its return, said unit will be sold and delivered to Allied, either at the Agreement closing or at such later date when said unit is returned to PLE.

If the foregoing accurately reflects our agreement with respect to the Deposit and the other issues referred to above, please execute the enclosed duplicate original of this letter in the space provided below, and return it to me by facsimile transmission and by overnight delivery service.


Sincerely yours,

  
Gordon E. Neuenschwander  
President

AGREED AND ACCEPTED:

ALLIED ENTERPRISES, INC.

By:

  
Its: Vice President & CMO

**BILL OF SALE WITH GENERAL WARRANTY**

NorRail, Inc. ("Seller") for valuable consideration paid by Allied Enterprises, Inc. ("Allied"), at or before the execution and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, sell, transfer and set over unto Allied, its successors and assigns, all its right, title and interest in the following units of used railroad equipment (the "Equipment");

<u>Quantity</u>	<u>Description</u>	<u>Road Numbers</u>
70	Gondolas mfd. by Greenville Steel Co. Steel floors, 2,000 cu. ft. capacity 100 ton	See attachment

TO HAVE AND TO HOLD the Equipment unto Allied, its successors and assigns, for its and their own use forever.

Seller hereby warrants to Allied that, as of the date hereof, Seller has legal title to the Equipment and good and lawful right to sell the same, and title to the Equipment is free of all claims, liens, security interests or other encumbrances whatsoever (excepting only any of the same as may have been created by Allied). Seller will defend Allied and its successors and assigns against any party asserting any such claim, lien, security interest or encumbrance.

THE EQUIPMENT IS BEING SOLD ON AN "AS IS, WHERE IS" BASIS AND WITH ALL FAULTS. EXCEPT AS SET FORTH IN THE PURCHASE AND SALE AGREEMENT NO. 1544 BETWEEN SELLER AND ALLIED AND AS SET FORTH HEREIN, THE SELLER MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS LIABILITY FOR LOST PROFITS OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES AND ALL OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized officer, this \_\_\_\_\_ day of July 1993.

NORRAIL, INC.

By: \_\_\_\_\_

(SEAL)

Attest:

\_\_\_\_\_

53305\clsr6%.ech

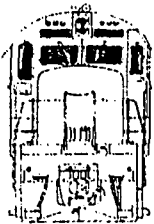


**ATTACHMENT A**

**70 GONDOLA RAILCARS**

PLE 47000  
PLE 47002  
PLE 47004  
PLE 47005  
PLE 47006  
PLE 47007  
PLE 47010  
PLE 47012  
PLE 47013  
PLE 47014  
PLE 47015  
PLE 47018  
PLE 47019  
PLE 47021  
PLE 47022  
PLE 47023  
PLE 47024  
PLE 47026  
PLE 47028  
PLE 47031  
PLE 47032  
PLE 47033  
PLE 47037  
PLE 47038  
PLE 47040  
PLE 47042  
PLE 47045  
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PLE 47047  
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PLE 47049  
PLE 47052  
PLE 47054  
PLE 47055  
PLE 47058

PLE 47062  
PLE 47063  
PLE 47074  
PLE 47078  
PLE 47080  
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PLE 47083  
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PLE 47098  
PLE 47099  
PLE 47101  
PLE 47104  
PLE 47107  
PLE 47110  
PLE 47111  
PLE 47117  
PLE 47119  
PLE 47121  
PLE 47123  
PLE 47126  
PLE 47127  
PLE 47128  
PLE 47129  
PLE 47130  
PLE 47134  
PLE 47135  
PLE 47136



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ALLIED ENTERPRISES, INC.

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August 9, 1993

NorRail, Inc.  
308 12th Avenue South  
Buffalo, MN 55313  
Attn: Russell S. Adams

Dear Russ:

This refers to the Purchase and Sale Agreement No. 1544 (the "Agreement"), between Allied Enterprises, Inc. ("Allied") and NorRail, Inc. ("NorRail"), dated July 22, 1993, for the purchase by Allied of 70 100-ton gondolas, as shown on Exhibit A of the Agreement.

We have been informed that Car No. 47121 is not available for sale, due to loss or damage. Accordingly, this is to confirm our understanding that the Agreement is hereby amended to reflect Allied's purchase of 69, rather than 70, gondolas.

All other terms and conditions of the Agreement will remain the same. If the foregoing reflects your understanding of our agreement, please do indicate by executing this letter in the space provided below and providing a countersigned copy to me.

Very truly yours,

Randolph P. Hannold  
Vice President & CMO

AGREED:

NorRail, Inc.

BY:

Its: Vice President, Sales

Date: 8/10/93

**EXHIBIT B TO LOAN AND SECURITY AGREEMENT  
BY AND BETWEEN DEUTSCHE CREDIT CORPORATION AND ALLIED ENTERPRISES, INC. \***

PLE	47000	PLE	47062
PLE	47002	PLE	47063
PLE	47004	PLE	47074
PLE	47005	PLE	47078
PLE	47006	PLE	47080
PLE	47007	PLE	47081
PLE	47010	PLE	47083
PLE	47012	PLE	47085
PLE	47013	PLE	47086
PLE	47014	PLE	47087
PLE	47015	PLE	47088
PLE	47018	PLE	47091
PLE	47019	PLE	47093
PLE	47021	PLE	47095
PLE	47022	PLE	47096
PLE	47023	PLE	47097
PLE	47024	PLE	47098
PLE	47026	PLE	47099
PLE	47028	PLE	47101
PLE	47031	PLE	47104
PLE	47032	PLE	47107
PLE	47033	PLE	47110
PLE	47037	PLE	47111
PLE	47038	PLE	47117
PLE	47040	PLE	47119
PLE	47042	PLE	47123
PLE	47045	PLE	47126
PLE	47046	PLE	47127
PLE	47047	PLE	47128
PLE	47048	PLE	47129
PLE	47049	PLE	47130
PLE	47052	PLE	47134
PLE	47054	PLE	47135
PLE	47055	PLE	47136
PLE	47058		

\* Subsequent to modification pursuant to agreement by East Railroad Services, Inc, New Castle, PA, these Railcars will bear Marks and Numbers A & M 900-969 but not necessarily to correspond to the order set forth above.



EXHIBIT C

## **EAST RAILROAD SERVICES CORP.**

MANOR OAK II • 1910 COCHRAN RD. • SUITE 657 • PITTSBURGH, PA 15220  
(412) 344-6296

August 6, 1993

Mr. R. P. Hannold  
Allied Enterprises, Inc.  
107 North Commercial  
Springdale, AR 72764

Subject: 24 inch side height extension on former P&LE 47000 series  
100 ton Gondolas

Dear Randy:

East Railroad Services ("East") is pleased to offer Allied Enterprises, Inc. ("Allied") the following quote for the 24 inch side height extension on the above mentioned cars.

(1) The cost for the 24 inch extension as shown on drawings #2452-004, 2452-005, 2452-009, 2452-001, 2452-010 which includes labor and material and light weight will be -

**\$6,520.00**

The above price is based on the sides of existing cars not exceeding 3 inches bowed in or out. Any side that exceeds the 3 inches and has to be adjusted to fit the 2 feet side extension will be brought to the attention of Allied. Any cost to adjust the existing side will be approved by Allied.

(2) East will blast to the Steel Structural Paint Council, specification #7 brush off blast cleaning. Paint will be 6 mill dry film thickness. The cost for blasting and painting will be -

**\$1,226.30**

Allied will supply the paint. Standard stencilling only will be included.

(3) Any additional work required by Allied will be at \$39.00 per hour, plus material.

All additional work required by Allied will be estimated and forwarded to Allied for approval before any of the repairs are made.

All transportation of the equipment to and from East's shop at New Castle, PA will be for Allied's account.

Mr. R. P. Hannold  
August 6, 1993  
Page Two

Any AAR approval for the side extension will be for Allied's account.

Payment will be made after inspection and acceptance by Allied Enterprise, Inc. on any car or cars prior to shipment from our New Castle plant.

East will furnish Allied with certification that each car has been modified in accordance with the specifications agreed to by Allied and consistent with the standards approved by Deutsche Credit Corporation's ("Lender") inspectors upon payment by Allied, East will complete and furnish to Allied a certificate releasing any and all liens East may have on the equipment.

Start-up will be two (2) weeks after receiving cars and material for this project.

Production will be one (1) car per day after start-up. Completion of project after start up date not to exceed ninety (90) days.

Allied ("Lessor") will lease the cars to Arkansas & Missouri Railroad Company ("Lessee"). The cars will carry reporting marks AM 900 thru 968.

We appreciate the opportunity to quote on this project and if you have any questions please call.

East has been notified by Allied that it will assign its interest in this agreement to Lender and will execute an acknowledgement of this assignment in the form furnished by the Lender and attached to this letter agreement.

If you are in complete agreement with the contents of this letter please sign on the space provided below and return to me.

Thank you.

Sincerely,

**EAST RAILROAD SERVICES CORPORATION**

  
Donald W. LaPorte  
Vice President

DWL/lm

**ALLIED ENTERPRISES, INC.**

ACCEPTED BY:

TITLE:

DATE:

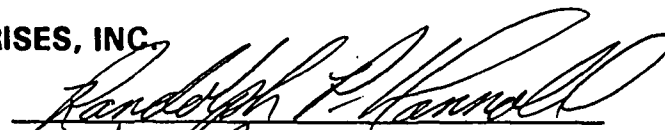

  
  
8/10/93



Exhibit E

  X   Acquisition Advance Certificate    Date: \_\_\_\_\_

\_\_\_\_\_ Modification Advance Certificate    Date: \_\_\_\_\_

CURRENT MARK	CURRENT NUMBER	NEW MARK	NEW NUMBER	ADVANCES PREVIOUSLY MADE	AMOUNT OF THIS ADVANCE
PLE	47000				
PLE	47002				
PLE	47004				
PLE	47005				
PLE	47006				
PLE	47007				
PLE	47010				
PLE	47012				
PLE	47013				
PLE	47014				
PLE	47015				
PLE	47018				
PLE	47019				
PLE	47021				
PLE	47022				
PLE	47023				
PLE	47024				
PLE	47025				
PLE	47026				
PLE	47028				
PLE	47031				
PLE	43032				
PLE	47033				
PLE	43037				
PLE	47038				
PLE	47040				
PLE	47042				

CURRENT MARK	CURRENT NUMBER	NEW MARK	NEW NUMBER	ADVANCES PREVIOUSLY MADE	AMOUNT OF THIS ADVANCE
PLE	47045				
PLE	47046				
PLE	47047				
PLE	47048				
PLE	47049				
PLE	47052				
PLE	47054				
PLE	47055				
PLE	47058				
PLE	47062				
PLE	47063				
PLE	47074				
PLE	47078				
PLE	47080				
PLE	47081				
PLE	47083				
PLE	47085				
PLE	47086				
PLE	47088				
PLE	47091				
PLE	47093				
PLE	47095				
PLE	47096				
PLE	47097				
PLE	47098				
PLE	47099				
PLE	47101				
PLE	47104				
PLE	47107				
PLE	47110				
PLE	47111				



CURRENT MARK	CURRENT NUMBER	NEW MARK	NEW NUMBER	ADVANCES PREVIOUSLY MADE	AMOUNT OF THIS ADVANCE
PLE	47123				
PLE	47126				
PLE	47128				
PLE	47129				
PLE	47130				
PLE	47134				
PLE	47135				
PLE	47136				
PLE	47087				
-----					
TOTALS				\$	\$
-----					

The undersigned certified that he/she is the \_\_\_\_\_ of Allied Enterprises, Inc., the Borrower; that this Certificate delivered pursuant to Section A.2(1)(b), or A.3(1)(A), as applicable, of the Loan and Security Agreement by and between Allied enterprises, Inc. and Deutsche Credit Corporation, as Lender, dated August \_\_\_\_\_, 1993 (the "Loan and Security Agreement"), is true, accurate and complete as of the date hereof; that the totals set forth above are true and accurate and that the rail cars set forth above are being acquired free and clear of any and all liens or encumbrances and are being delivered or have been delivered to East Railroad Services Corp. for certain modification thereto; or that the railcars set forth above, which have previously been acquired free and clear of any and all liens and encumbrances, have been completely and satisfactorily modified, and have been delivered to the Arkansas and Missouri Railroad, who is to lease the railcars from the undersigned Borrower; and that the funds to be advanced pursuant to this certificate are within the maximum permitted under the Loan and Security Agreement.

IN WITNESS WHEREOF, I have set my hand this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit F

Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, IL 60015

A certain Loan and Security Agreement dated \_\_\_\_\_,  
by and between Allied Enterprises, Inc. as Mortgagor  
and Deutsche Credit Corporation as Mortgagee.

Gentlemen:

We hereby irrevocably authorize, direct and request that you pay

\_\_\_\_\_ at \_\_\_\_\_  
the sum of \$ \_\_\_\_\_ which represents the entire proceeds  
due the undersigned under captioned.

Payment by you to \_\_\_\_\_ as  
aforesaid shall be in all respects the equivalent of payment directly to us and  
you shall not be obligated to see to the application thereof by the recipient.

Sincerely,

Allied Enterprises, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit G

ALLIED ENTERPRISES, INC.  
CERTIFICATE OF INCUMBENCY

I, Mary M. Martin, Secretary of Allied Enterprises, Inc., a corporation organized and existing under the laws of the State of Delaware, DO HEREBY CERTIFY that the following named persons on \_\_\_\_\_, 19\_\_\_\_, and at all times subsequent thereto and including the date hereof were duly elected to, qualified for and held the offices indicated after their names and the following are specimen signatures of such officers:

<u>Name</u>	<u>Office</u>	<u>Specimen Signature</u>
J.A. Hannold	President	_____
G.B. McCready	Vice President	_____
Mary M. Martin	Secretary	_____
Mary M. Martin	Treasurer	_____
J.A. Brooks	Asst. Treasurer	_____
Greg Moldenhauer	Asst. Secretary	_____

IN WITNESS WHEREOF, I have hereunto affixed my signature and the corporate seal of this corporation this \_\_\_\_ day of \_\_\_\_\_, 1993.

CORPORATE SEAL

ordaz\agreements\allied\incumbncy.agr

\_\_\_\_\_  
Secretary

Exhibit H

**CERTIFICATE**

Pursuant to that certain Loan and Security Agreement dated as of August \_\_\_\_\_, 1993 (the "Agreement") between ALLIED ENTERPRISES, INC. (the "Borrower") and DEUTSCHE CREDIT CORPORATION ("Lender"), the undersigned hereby certifies to Lender, to the best of the undersigned's knowledge and belief that the representations and warranties of Borrower contained in the Agreement and of each party in any documents or certificates delivered pursuant to the Agreement shall be and are true and correct on and as of the Acquisition Advance Closing (as defined in the Agreement) with the same effect as though made on and as of the Acquisition Advance Closing, and as of the Acquisition Advance Closing there shall be and is no default under any leases with respect to the Railcars (as defined in the Agreement), or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the \_\_\_\_\_ day of August, 1993.

ALLIED ENTERPRISES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT I

RAILROAD EQUIPMENT LEASE

10th This RAILROAD EQUIPMENT LEASE is entered into as of the day of August, 1993, by and between ALLIED ENTERPRISES, INC., a Delaware corporation, hereinafter referred to as "Lessor"), and the ARKANSAS AND MISSOURI RAILROAD COMPANY, a Virginia Corporation (hereinafter referred to as "Lessee").

WITNESSETH:

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee all of the items of equipment, specifically identified herein, on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the rents, covenants and conditions hereinafter described, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Lease of Railcars. Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use, upon the terms and conditions set forth herein, the railcars described on the rider(s) attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties (collectively called the "Cars"). Each rider shall be in the form of Exhibit A attached hereto and shall set forth a description of the Cars, the number of Cars of each type, the specific Car marks and numbers as registered with the Association of American Railroads ("AAR"), the period for which the Cars will be leased (the "Term"), the rental charge per-car-per-period, the specific commodity or freight to be carried therein or thereon, any specific restrictions on use, the delivery location, and other pertinent information that may be desired by both parties. All Cars leased pursuant to such rider(s), or otherwise delivered to and accepted by Lessee, are and shall be subject to the terms and conditions of this Lease and/or any such riders hereto. This Lease and any and all riders hereto are herein collectively called the "Lease."

2. Net Lease. This Lease is a net lease. Lessee's obligation to pay all rent and other amounts payable hereunder, to maintain the Cars pursuant to paragraph 7 hereof and to insure the Cars pursuant to paragraph 19 hereof, shall be absolute and unconditional under any and all circumstances and, except to the extent expressly provided otherwise herein, Lessee shall not be

entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor whether under this Lease or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Lessor or otherwise; nor, except to the extent expressly provided otherwise herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Cars from whatever cause, any liens, encumbrances or rights of others with respect to any of the Cars, the prohibition of or other restriction against the Lessee's use of all or any of the Cars, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rent and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Cars except in accordance with the express terms hereof. Each rent or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

3. Delivery, Inspection and Acceptance of the Cars.

Lessor agrees to deliver the Cars to Lessee, at Lessee's expense, to the point(s) designated in the applicable rider hereto or as otherwise mutually agreed by Lessor and Lessee. Lessor shall have no liability or obligation to Lessee for any delay in delivery resulting from causes beyond Lessor's control. Each of the Cars shall be subject to an inspection by Lessee upon delivery. The condition of each Car will be evidenced by completion of a Certificate of Acceptance in the form of Exhibit B attached hereto. Lessee agrees to accept each such Car or to immediately notify Lessor of the nature and extent of any material defect that causes any Car to be reasonably deemed by the Lessee as unfit for use by Lessee. Execution by Lessee of a Certificate of Acceptance showing a car to be free of material defects shall constitute acceptance thereof by Lessee. If no such Certificate shall have been so executed, then the loading of any Car so delivered, by the Lessee or at its direction, or the

failure by Lessee to report any material defect in a car within five (5) days of delivery, shall be deemed to constitute acceptance thereof by Lessee, as of the date of delivery.

4. Payment of Rent. Lessee's obligation to pay Lessor rent and any other amounts required under this Lease for any Car shall commence on the date of acceptance by Lessee of such Car and shall continue in all events until the end of the Term for such Car as set forth in the applicable rider hereto, or the obligation to pay the same shall be terminated pursuant to paragraphs 8 or 21 hereof, and, in any case other than casualty loss, until the Cars have been returned to the possession of Lessor pursuant to, and in the condition required by, paragraph 13 hereof. Lessee agrees to pay such rent and other amounts due in accordance with the terms of this Lease. Lessee shall not be entitled to any abatement or reduction of, or setoff against, rent or any other amounts payable hereunder including, but not limited to, abatements, reductions or setoffs arising from any claims of Lessee against Lessor, under this Lease or otherwise, or against any other party. The rent shall be paid to Lessor in United States immediately available funds, monthly in advance on the first day of each month, and shall be prorated for any period for any Car that is leased for less than a full calendar month. Such payments shall be remitted to Lessor by wire transfer in accordance with instructions indicated on the applicable rider or, in the absence of such instructions, by check payable to Lessor via first-class mail to: ALLIED ENTERPRISES, INC., Attention: J. A. Hannold, 107 North Commercial Street, Springdale, AR 72764, or pursuant to such other instructions as Lessor shall from time to time direct in writing.

5. Use of the Cars. Lessee agrees (i) to use the Cars in its own service and in normal interchange service or as hereinafter provided; (ii) to use the Cars when on Lessee's lines only to carry the commodities described in the rider relating to such Cars; (iii) to use the Cars when on Lessee's lines in accordance with industry standards and in accordance with the rules and regulations of the AAR (including, without limitation, the Interchange Rules and the Codes of Car Hire and Car Service Rules), the Federal Railroad Administration ("FRA"), the Interstate Commerce Commission ("ICC"), the Department of Transportation ("DOT") and any other legislative, executive, administrative, judicial or governmental body exercising any power or jurisdiction over the Cars, to the extent such laws and rules affect the ownership, possession, operations or use of such Cars, or any successor organizations; (iv) to ensure that none of the Cars is loaded by Lessee in excess of the load limit stenciled on each of the Cars; and (v) that none of the Cars shall be shipped beyond the boundaries of the United States, Canada or Mexico except with the prior written consent of Lessor. Lessee may not use or allow the use of the Cars beyond the

boundaries of the United States, Canada or Mexico, or otherwise use, sublease, or permit the use of the Cars in any manner so as to cause Lessor to lose any deductions, credits or other benefits of ownership thereof under the Internal Revenue Code of 1986, as amended (the "Code"), or so as to cause any income hereunder to be designated as foreign source income or loss under the Code.

6. Taxes and Charges. Lessor shall be solely responsible for the payment of income taxes assessed against it for any rental or casualty payment received under this Lease. Lessee shall be responsible for and shall pay in a timely manner, and shall indemnify and hold Lessor harmless from: (i) any and all other taxes (withholding or otherwise), including but not limited to any ad valorem or property taxes imposed by the United States, Canada, Mexico, or any other country, or any state or province thereof, or any governmental or administrative subdivision thereof, and any sales, lease, use, gross receipts, franchise or single business taxes, and (ii) any and all other charges, license fees, assessments, fines, levies, imposts, duties, tariffs, customs duties, switching charges, mileage equalization charges, empty movement charges, track storage, detention or demurrage charges currently levied or imposed or arising from any change in law or otherwise, including penalties and interest thereon, levied or imposed by any domestic or foreign, federal, state or local government or taxing authority, railroad or other agency, imposed upon, or with respect to, either the Cars, the Lease, Lessee or Lessor in connection with this Lease. Lessee shall be under no obligation to pay any such taxes or other charges so long as Lessee is contesting in good faith and by appropriate legal proceedings imposition of such taxes or other charges and the nonpayment thereof does not or will not, in the reasonable opinion of Lessor, adversely affect any title, property or rights of Lessor hereunder in or to the rent or other sums payable under the Lease or in or to any Car, or diminish the value thereof. For the purpose of this paragraph the railroad mileage and junction reports shall be prima facie evidence of the facts reported therein. Lessee agrees to promptly reimburse Lessor for any of the foregoing paid by Lessor.

7. Maintenance and Repair of Cars. Lessee shall, at its own expense and risk, maintain and repair the Cars throughout the Term in good and fully serviceable condition, suitable for unrestricted revenue service and interchange, and in accordance with all applicable laws, rules and regulations of the FRA, the ICC, the DOT, the AAR and any and all other organizations or their successors with authority or jurisdiction over the operation of railcars in the geographic areas in which, or through which, the Cars operate or travel. Lessee shall promptly notify Lessor upon receipt by Lessee of knowledge that any of the Cars have been classified as "heavy bad order" or an equivalent classification, and of any substantial damage to any of the Cars.



8. Casualty. In the event any Car is irreparably damaged or destroyed or is out of service due to the loss or damage to or condition of the Car for more than 60 days, Lessee shall pay to Lessor, on the next following rent payment date, an amount equal to the greater of (i) casualty value of such Car as set forth in the casualty loss schedule attached to the applicable rider hereto, and (ii) that amount that would be payable to the owner of the Car under Rule 107 of the AAR, or any successor rule adopted by the AAR or any successor organization, in effect as of the date such car is removed from service, calculated under the assumption that Rule 107 is applicable under the circumstances relating to the loss, damage or destruction of the Car. Upon receipt of the casualty value amount and Rule 107 payment in connection with a Car, Lessor shall assign title to the Car to Lessee free of all liens and encumbrances. Rent in respect to any such Car will continue until all amounts due and payable to Lessor pursuant to clauses (i) and (ii) above in respect of such Car are received by Lessor, at which time this Lease shall be terminated as to the Subject Car.

9. Interior Protective Linings. Lessee agrees that it will, at its own expense, expressly in addition to its obligations to maintain the Cars under this Lease, maintain any interior protective linings or coatings in any of the Cars in a condition at least as good as when delivered to and accepted by Lessee and, in any case, free of perforation from corrosion, erosion or other damage. Lessee will not make any material change in the interior protective linings of any car without the prior written consent of Lessor, which consent shall specify the return conditions for such lining. In the event such consent is granted, the removal, modification, maintenance and/or application of any interior protective lining in any Car is to be performed by and at the sole expense and risk of Lessee, unless otherwise specifically provided for in the applicable rider or in such consent.

10. Modifications to Cars. Lessee agrees that it will not make any modifications to any of the Cars without the prior written consent of Lessor. In the event that any governmental agency or non-governmental organization having jurisdiction over the operation, safety or use of railroad equipment requires that any addition, removal, modification, replacement or adjustment be made to any of the Cars in order to qualify them for operation in railroad interchange service (hereinafter "Modifications"), Lessee agrees to pay all costs or expenses required to make any such Modifications. Any parts or items added, whether as replacements or additions or Modifications, shall be considered accessions to the Cars and title thereto shall be immediately vested in Lessor at no cost or expense to Lessor, and shall remain on and not be removed from the Cars upon the return of the Cars to Lessor at lease termination.

11. Markings on Car. Upon delivery to Lessee, the Cars will bear reporting marks and car numbers as detailed in the applicable rider to this Lease and as registered with the AAR. Lessee shall reimburse Lessor for the cost of blasting, painting and stenciling the Cars. Lessee shall insure that the Cars remain so marked throughout the term of this Lease. No lettering or marking of any kind shall be placed upon or removed from any of the Cars by Lessee without prior written notice to Lessor, except as directed by Lessor or as mandated under requirements of the FRA, the ICC, the DOT, the AAR or other governmental agency or non-governmental organization having jurisdiction over labels or markings on railroad equipment. In the event any such change in any markings on any Cars is mandated by any such organization with jurisdiction, Lessee will immediately notify Lessor in writing prior to effecting such change, and, if requested to do so by Lessor, Lessee will file a statement of new car numbers or otherwise arrange for the reregistration of the Cars as required by any governmental or non-governmental agency or organization in order to maintain the existing registration of the Cars and in order to protect Lessor's title and interest in and to the Cars and in and to the Lease. Any such allowed or required changes in or of lettering or markings on a Car shall be performed at the expense and risk of Lessee. Lessee will keep and maintain, plainly, distinctly, permanently, and conspicuously marked on each side of each Car, in letters not less than one inch in height, the following words: "Ownership subject to documents filed with the ICC," or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested by Lessor in order to protect the title of Lessor to the Cars and the rights of Lessor under this Lease. Lessee will not place any of the Cars in operation or exercise any control or dominion over the same until such words have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. Lessee will not allow the name of any person, association or corporation to be placed on any of the Cars as a designation which might be interpreted as a claim of ownership thereof; provided, however, that Lessee may permit the Cars to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee, so long as this Lease shall remain in effect, on railroad equipment used by it of the same or similar type for convenience of identification of the right of the Lessee to use the Cars under this Lease.

12. Inspections and Records. Lessor or its designated agent shall have the right, from time to time, to inspect the Cars and Lessee's records and books with respect to the Cars at any reasonable time with two days' prior, written notice. Lessee agrees to assist Lessor in performing any such inspection to the extent such assistance does not materially interfere with Lessee's operations. Lessee hereby authorizes Lessor, and agrees

that Lessor shall be entitled, to access UMLER and receive all information thereon with respect to the Cars, or the use and operation thereof, together with all other such information as may be available from the AAR, and Lessee agrees to execute such instruments or consents as may be necessary or required in order to carry out the intent of this paragraph 12.

13. Return of Cars. Except as otherwise set forth in the applicable rider with respect to any Car and except as to any Car that suffers a casualty loss covered by Paragraph 8 hereof, upon termination of the Lease with respect to any Car, Lessee agrees, at its sole expense and risk, to store such Car for such reasonable period of time as Lessor shall request, and, at the Lessee's sole expense and risk, to promptly redeliver such Car to Lessor at such interchange points within the continental United States as Lessor may reasonably specify. Each Car shall be subject to Lessor's inspection and acceptance upon redelivery. Each Car shall be in conformance with the applicable requirements of the AAR, the FRA, the ICC, the DOT, and any other legislative, administrative, judicial, regulatory or governmental body having jurisdiction in the matter, or any successor organizations, and shall be in at least as good condition as when delivered to Lessee, ordinary wear and tear excepted, including but not limited to (i) having fully functional and wind/water/commodity tight hatches, doors and outlets; (ii) being free from all charges and liens that Lessee is required to discharge pursuant to paragraph 14 hereof; (iii) being free from all accumulation or deposits, whether from commodities transported in or on the Cars while in the service of Lessee or otherwise; and (iv) replacement of the interior protective lining, if any. In addition, if directed by Lessor, Lessee shall, at its own expense and risk, remove any structural members, bulkheads or any other load carrying or containing devices installed on or attached to any of the Cars by Lessee, repair any damage caused by such removal, and restore such Cars to the same configuration as when originally delivered to Lessee. Promptly upon request by Lessor, Lessee shall remove any markings on the Cars which indicate Lessee has any interest in the Cars and if requested by Lessor, at Lessor's cost, remark the Cars in accordance with Lessor's instructions. For each day any Car shall not have been so returned to Lessor, or for each day any Car so returned is not in such required condition, Lessee's obligation to pay rent and any other amounts under this Lease or riders hereto will continue beyond the termination date in an amount equal to the greater of (i) the then fair market daily rental for such Car as reasonably determined by Lessor or (ii) 125% of the daily rental for such Car indicated in the applicable rider (based upon a proration if no daily rate is set forth on said rider), until Lessee shall so return and/or repair or clean any such Car, or reimburse Lessor for any expenses incurred in repairing or cleaning any such Car. For all purposes of this Lease no Car shall be deemed to have

been returned to Lessor's possession until all of Lessee's obligations herein pertaining to such Car have been performed.

14. Liens on the Equipment. Lessee shall pay or satisfy and discharge any and all liens or charges that may be levied against or imposed upon any Car, and any and all claims that, if unpaid, might constitute or become a lien or a charge upon any Car, except for any lien that (i) results from an affirmative act of Lessor to create a lien, which act is neither consented to by Lessee nor created in connection with a Default (as hereinafter defined), or (ii) results from claims against Lessor not related or connected to the ownership, leasing, use or operation of any of the Cars or its status as lessor under this Lease. Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner that will not, in the reasonable opinion of Lessor, adversely affect or endanger the title or interest of Lessor herein or in and to the Cars, or diminish the value of the Cars. Lessee's obligations under this paragraph 14 shall survive the termination of this Lease.

15. Limitations on Lessee's Interest. No right, title or interest in any of the Cars shall vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Cars, except the right to use the Cars in accordance with the terms of this Lease. Lessee shall make no transfer, assignment or pledge of its interest under this Lease in and to the Cars without Lessor's or any Assignee's prior written consent, except that Lessee may sublease any of the Cars to its customers for single trips consistent with its normal business practices; provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Lessor, as principal and not as surety, under all terms and conditions of this Lease.

16. Loss of or Damage to Commodities or Freight. Lessor shall not be liable for any loss or damage to any commodity or freight of any kind, or any part thereof, loaded or shipped in or on the Cars. Lessee agrees to assume responsibility for, and any liability arising from, any such loss or damage, and further agrees to indemnify Lessor against, and hold Lessor harmless from, claims for any such loss or damage.

17. Indemnification. Lessee agrees to indemnify and hold harmless Lessor, its employees, agents, officers, directors, shareholders, subsidiaries, affiliates and each of their successors and assigns from and against any loss, liability, claim, cost, damage or expense (including reasonable attorney's fees), of whatsoever kind and nature, arising out of any breach of this Lease by Lessee, or arising out of or in connection with the possession, leasing, subleasing, storage, use, condition,

selection, delivery or return of any Car from the date of acceptance by Lessee to the date of return and acceptance by Lessor, excepting, however, any loss, liability, claim, cost, damage or expense that is attributable to the gross negligence or wilful misconduct of Lessor. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Lease. Lessee is an independent contractor, and nothing contained in this Lease shall authorize Lessee or any other person to operate any of the Cars so as to incur or impose any liability or obligation for or on behalf of Lessor.

18. Late Payment. Lessee shall pay interest on any payment or other amount due to Lessor not received by Lessor within five business days of the required due date. Interest on any such late payment will accrue from and including the due date until the date received by Lessor at an interest rate equal to the highest contract rate allowed by law but in any event not to exceed two percent (2%) per month, during the period of delinquency.

19. Insurance. Lessee agrees that during the term of this Lease, it will provide and maintain insurance with respect to the Cars in such amounts and against such risks as are customary in the industry. Such insurance shall be satisfactory in all respects to Lessor in the exercise of reasonable discretion. All insurance shall name Lessor and Deutsche Credit as insureds, and shall provide 30 days' written notice to Lessor of cancellation or of material change with respect to coverage, deductibles, limits, conditions or exclusions. Lessee shall use best efforts to obtain agreements from Insurers to waive all rights of subrogation against Lessor. Insurance shall be primary without right of contribution and shall operate in the same manner as if a separate policy covers each additional insured. The insurance shall not be invalidated by any act or omission of Lessee, its affiliates, employees, officers, directors, or agents, regardless of any breach or violation by Lessee of any warranty, declaration, or condition contained in such policies. Lessee shall, not later than March 1st of each year during the Term of this Lease, furnish to Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder. Lessee shall furnish to Lessor certificates evidencing renewal of such policy or policies not later than 15 days after the expiration date of such policy or policies. Lessor shall have the right, at Lessor's expense, to carry insurance on the Cars for its own behalf.

20. Default. Each of the following shall be a Default under this Lease: Lessee (i) fails to pay within ten (10) days after the due date any rent or other amount required to be paid

under this Lease; or (ii) fails to perform any of its obligations under this Lease and fails to cure same within thirty (30) days after written notice thereof to Lessee; or (iii) is in default of any of the material terms and conditions of any other lease or other financial obligation of Lessee, which default is not cured within thirty (30) days after Lessee receives written notice thereof; or (iv) is insolvent or makes an assignment for the benefit of creditors, or a trustee or a receiver is appointed for Lessee or for a substantial part of its assets, or a petition in bankruptcy or for reorganization or a similar proceeding is filed by or against Lessee, provided that in cases of a bankruptcy or reorganization proceeding filed against Lessee, same shall not be a default if such proceeding is discharged within sixty (60) days after the commencement of such proceeding; (v) does, or attempts to, abandon, remove, sell, encumber, assign or sublet (other than as specifically permitted hereby) any of the Cars; or (vi) makes or made any material misrepresentation to Lessor in connection with this Lease, provided that such misrepresentation shall not constitute a default hereunder if (A) the misrepresentation was not made knowingly or intentionally by Lessee, (B) such misrepresentation does not cause Lessor to incur a material loss, and (C) Lessee takes prompt steps to correct the misrepresentation.

21. Remedies. Upon the occurrence of a Default and at any time thereafter so long as the Default is continuing, Lessor may, in its sole discretion, do any one or more of the following with respect to any or all of the Cars subject to this Lease: (i) demand immediate payment of the total amount of the unpaid rent and other payments then due; and/or (ii) demand the return of any or all of the Cars in accordance with paragraph 13 hereof; and/or (iii) take possession of any or all of the Cars, without demand or notice, without court order or other processes of law and without liability for any damages occasioned by the taking of possession; and/or (iv) upon notice to Lessee, terminate this Lease and/or any riders hereto as to any or all of the Cars subject thereto; and/or (v) exercise any other right or remedy available to Lessor under applicable law. In the event of any such Default, Lessee shall provide free storage of any Cars subject to this Lease until such Cars are re-leased or sold, shall, at the direction of Lessor, promptly deliver the Cars, at Lessee's expense and risk, to Lessor or its designee at such locations as Lessor shall designate, and shall pay Lessor for all costs and expenses, including attorney's fees and court costs, incurred by Lessor in exercising any of Lessor's rights or remedies hereunder or in enforcing any of the provisions of this Lease. No remedy referred to in this Lease is intended to be exclusive, but each shall be in addition to any other remedy referred to or otherwise available to Lessor. No failure on the part of Lessor to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof unless

specifically waived by Lessor in writing, nor shall any single or partial exercise by the Lessor of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

22. Sale or Assignment by Lessor. Lessee agrees that Lessor may sell, assign or pledge Lessor's interest in the Cars and/or this Lease and/or any riders hereto, in whole or in part, to any person, firm, partnership or corporation (an "Assignee"), at Lessor's sole discretion, subject to the interests of Lessee arising from this Lease, and that all of the rights of Lessor provided for herein may be enforced without limitation by the Assignee(s). Any such Assignee shall have and be entitled to exercise any and all rights and powers of Lessor hereunder or under any Lease and/or riders hereto but such Assignee shall not be obligated to perform any of the obligations of the Lessor; provided, however, that in the event of a collateral assignment, these rights shall be subject to the terms and conditions of the collateral assignment agreement.

23. Waiver of Warranties and Representations. LESSOR HEREBY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE DESIGN, CONDITION, COMPLIANCE WITH LAW OR SPECIFICATIONS, OPERATION, MERCHANTABILITY, SUITABILITY, QUALITY, FITNESS FOR A PARTICULAR USE OR SERVICE OR ANY OTHER MATTER CONCERNING THE CARS OR ANY PART THEREOF. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR, ITS SUBSIDIARIES, SUCCESSORS OR ASSIGNS FOR ANY CLAIMS CAUSED BY THE CARS OR ANY DEFECT THEREIN OR THE OPERATION, MAINTENANCE OR REPAIR THEREOF. IT IS FURTHER AGREED THAT LESSOR SHALL HAVE NO LIABILITY TO LESSEE, LESSEE'S CUSTOMERS, OR ANY THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY ARISING OUT OF THIS LEASE, OR WITH RESPECT TO THE USE, OPERATION, LEASING OR SUBLEASING OF THE CARS OR ANY PART THEREOF. LESSEE EXPRESSLY ACKNOWLEDGES THAT IT LEASES THE CARS "AS-IS."

24. Annual Reports. On or before April 1 of each year during the Term of this Lease, Lessee will furnish to Lessor, Lessee's certificate, as of the preceding December 31, (i) showing the amount, description and numbers of Cars then leased hereunder and the amount, description and numbers of all Cars that may have suffered a Casualty during the preceding twelve (12) months (or since the beginning of the Term if less than twelve months) and such other information regarding the condition and state of repair of the Cars as Lessor may reasonably request, (ii) stating that, in the case of all Cars repaired or repainted during the period covered thereby, the markings required by paragraph 11 hereof have been preserved or replaced, and (iii) containing all other information in the possession of Lessee that

is required to be filed by Lessor with any division of the AAR, the ICC, the DOT, the FRA, or, any other federal, state, administrative, legislative, judicial or governmental body having jurisdiction in the matter. Lessee agrees to provide to Lessor in a timely manner, audited financial statements for itself and its ultimate legal parent (if any) on an annual basis, and unaudited financial statements on a quarterly basis, certified by the Treasurer of Lessee, with supporting detail and documentation to such statements as Lessor may reasonably request from time to time, and such other reports and information as Lessor may from time to time request throughout the Term.

25. ICC Filing. Upon the request of Lessor, Lessee will execute a memorandum of this Lease and or any rider or amendment hereto in form appropriate for filing with the ICC or any other governmental department or agency or non-governmental organization. Lessor, at its discretion, may file and record this Lease and/or any rider or amendment hereto and/or any such memorandum with the ICC or other department or organization.

26. Non-Waiver. Neither the failure nor the delay of Lessor to enforce any provision of this Lease or to prosecute any Default shall be considered as a waiver of that provision or affect the right of Lessor to enforce such provision or any other provision hereof.

27. Law Governing. This Lease and any rider hereto shall be interpreted under, and its performance shall be governed by, the laws of the State of Arkansas without regard to its conflict of laws doctrine, and the applicable laws of the United States. To the extent there exists any conflict between the terms and provisions of this Lease and the terms and provisions of the Interchange Rules or the Codes of Car Hire and Car Service Rules of the AAR, this Lease shall control.

28. Lessee's Representations and Warranties. Lessee hereby represents and warrants that: (i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state of Lessee's incorporation and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction wherein the failure to so qualify could have a material adverse effect on the business or financial condition of Lessee; (ii) Lessee has full power and authority to execute, deliver and perform this Lease and all related documents or instruments and to own or lease its properties and to carry on its business as now conducted and as contemplated by this Lease; (iii) this Lease and all related documents or instruments have been duly authorized, executed and delivered by Lessee and constitute the legal, valid and binding obligations of Lessee enforceable against it in accordance with the terms hereof and thereof; (iv) no authorization, consent or approval of, notice to



or filing with any governmental authority is required for the execution, delivery or performance by Lessee of this Lease or any related document or instrument or for the acceptance, use or maintenance of the Cars; and (v) neither the execution, delivery or performance by Lessee of this Lease or any related document or instrument, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of Lessee or any order, writ, injunction or decree of any court or governmental authority against Lessee or by which it is bound or of any financial, credit or other agreement to which it is a party.

29. Miscellaneous. This Lease shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. Lessee waives any right to trial by jury on any issues or claims arising under this Lease.

30. Notice. All communications under this Lease shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses:

If to Lessor:

Allied Enterprises, Inc.  
107 N. Commercial Street  
Springdale, Arkansas 72764  
Attention: J. A. Hannold  
Fax No. (501) 751-2225

If to Lessee:

Arkansas and Missouri Railroad Company  
107 N. Commercial Street  
Springdale, Arkansas 72764  
Attention: R. P. Hannold  
Fax No. (501) 751-7603

or to any such other address as may be given by any party to the other party by notice pursuant to the provisions of this paragraph 30.

31. Severability. Any term, condition or provision of this Lease or any rider hereto which is, or is deemed to be, void, prohibited, or unenforceable in any jurisdiction is, as to such jurisdiction severable herefrom or therefrom, and is ineffective to the extent of such avoidances, prohibition and unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof or thereof. Any such avoidance, prohibition and unenforceability in any jurisdiction does not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

32. Entire Agreement. This Lease contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings and representations, oral or written. No modification, limitation or release of any of the terms and conditions contained herein shall be made except by mutual agreement to that effect in writing and signed by the parties hereto.

33. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be necessary for every party hereto to sign each counterpart but only that each party shall sign at least one such counterpart.

34. Headings. The paragraph headings contained in this Lease are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Lease.

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed by their respective duly authorized officer as of the day and year first above written.

ALLIED ENTERPRISES, INC.

ARKANSAS AND MISSOURI  
RAILROAD COMPANY

By: J. A. Hannold  
Name: J. A. Hannold  
Title: Pres

By: R. P. Hannold  
Name: R. P. Hannold  
Title: Vice Pres & CMO

STATE OF ARKANSAS

SS:

COUNTY OF WASHINGTON

On this 10<sup>th</sup> day of AUGUST, 1993, before me personally appeared J.A. HANNOLD, to me personally known, who being duly sworn, says that he is President of ALLIED ENTERPRISES, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Victoria L Morgan  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 02-01-2002

STATE OF ARKANSAS

SS:

COUNTY OF WASHINGTON

On this 10<sup>th</sup> day of AUGUST, 1993, before me personally appeared R.P. HANNOLD, to me personally known, who being duly sworn, says that he is Vice Pres & CMD of ARKANSAS AND MISSOURI RAILROAD COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Victoria L Morgan  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 02-01-2002

EXHIBIT A

RIDER 1 TO RAILROAD EQUIPMENT LEASE (the "LEASE")  
BETWEEN ALLIED ENTERPRISES, INC. AND  
ARKANSAS AND MISSOURI RAILROAD COMPANY  
DATED August 10, 1993

-----  
DATE OF RIDER: August 10, 1993  
NUMBER OF CARS AND CAR TYPE: Sixty-Nine (69) 52 foot Gondolas  
CAR MARKS AND NUMBERS: As shown on attached Schedule 2  
LEASE COMMENCEMENT DATE: From acceptance of cars by Arkansas & Missouri Railroad Company.  
LEASE TERMINATION DATE: Seventy-Two (72) months from average date of acceptance.  
PAYMENT FREQUENCY: Monthly  
RENT PAYMENT: \$570.15 per car  
PAYMENT INSTRUCTIONS: As per lease.  
CASUALTY VALUE: Per attached Schedule 1.  
PERMISSIBLE COMMODITIES/  
SERVICE: As per lease.  
RESTRICTIONS ON USE: As per lease.  
DELIVERY LOCATION: New Castle, PA  
RETURN LOCATION: Springdale, AR  
ADDITIONAL RETURN PROVISIONS: None  
Agreed this 10th day of August, 1993,  
by and between Allied Enterprises, Inc. and Arkansas and Missouri Railroad Company.

ALLIED ENTERPRISES, INC.

By: J. A. Hannold  
Name: J. A. Hannold  
Title: Pres

ARKANSAS AND MISSOURI  
RAILROAD COMPANY

By: R. P. Hannold  
Name: R. P. Hannold  
Title: Vice Pres & CMO

**SCHEDULE 1 TO RIDER  
TO RAILROAD EQUIPMENT LEASE**

**CASUALTY VALUES**

<u>Month of Lease</u>	<u>Amount Per Car</u>
1.	\$23,680
2.	23,413
3.	23,150
4.	22,880
5.	22,614
6.	22,345
7.	22,061
8.	21,789
9.	21,510
10.	21,235
11.	20,953
12.	20,674
13.	20,392
14.	20,105
15.	19,820
16.	19,529
17.	19,241
18.	18,950
19.	18,646
20.	18,352
21.	18,051
22.	17,753
23.	17,449
24.	17,147
25.	16,843
26.	16,533
27.	16,225
28.	15,911
29.	15,599
30.	15,285
31.	14,962
32.	14,643
33.	14,320
34.	13,997
35.	13,669
36.	13,343
37.	13,014
38.	12,680
39.	12,346
40.	12,008
41.	11,670
42.	11,330
43.	10,981
44.	10,636
45.	10,287
46.	9,938
47.	9,585

48.	\$ 9,231
49.	8,876
50.	8,515
51.	8,155
52.	7,790
53.	7,425
54.	7,057
55.	6,683
56.	6,310
57.	5,934
58.	5,556
59.	5,175
60.	4,793
61.	4,408
62.	4,019
63.	3,629
64.	3,236
65.	2,841
66.	2,443
67.	2,042
68.	1,639
69.	1,233
70.	825
71.	414
72.	414

and until such time as the  
Cars are returned to Lessor  
in accordance with the provisions  
of paragraph 13 of the Lease.

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COUNTY OF WASHINGTON

Victoria L Morgan  
Notary Public

My Commission Expires: 02-01-2002

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COUNTY OF WASHINGTON

Victoria L Morgan  
Notary Public

My Commission Expires: 02-01-2002

Exhibit J

ASSIGNMENT OF LEASE AND RENTS

THIS ASSIGNMENT, made as of the \_\_\_\_\_ day of August, 1993, by Allied Enterprises, Inc. (hereinafter referred to as the "Company"), a Delaware corporation with its office and principal place of business at 107 N. Commercial Street, Springdale, AR 72764.

WITNESSETH:

The Company hereby sells, assigns, transfers and sets over unto the Lender all of the Company's right, title and interest in and to that certain railroad car lease agreement dated August \_\_\_\_\_, 1993, between the Company (as lessor), and the Arkansas and Missouri Railroad Company (hereinafter, the "Lessee"), and to all rents, renewal rents, proceeds of settlement for cars thereto listed in Exhibit A attached hereto and hereby made a part hereof (hereinafter, the "Cars") which are lost, destroyed or damaged beyond repair and all other sums due and to become due under and pursuant to or by reason of the above described lease. This Assignment covers and includes all amendments and supplements to and renewals of the above-described lease at any time made (said lease including all amendments and supplements hereinafter shall be called the "Lease").

This Assignment is given and intended as continuing collateral security for the payment of any and all indebtedness of the Company to the Lender as follows: all obligations of the Company to the Lender now existing or hereafter arising, as provided for in those certain Promissory Notes in the aggregate principal amount of up to \_\_\_\_\_ executed and delivered or to be executed and delivered by the Company to the Lender (the "Promissory Notes"), including without limitation any and all interest thereon and expenses therefor and any and all extensions and/or renewals of such obligations, all of which obligations are hereinafter called the "Obligations", whether Obligations shall at any time or from time to time have been reduced or paid in full and thereafter increased or reincurred, and no renewal of, or extension of time of payment of the Obligations or evidence of indebtedness or any part thereof, and no agreement not to sue or release or discharge of any persons liable therefor or thereon, or release or exchange of other collateral or any act or thing whatsoever shall diminish, discharge, impair or affect this Assignment or the security afforded hereby, save payment in full by the Company to the Lender of any and all Obligations of the Company to the Lender arising under the Promissory Notes, while no default exists under any of the other provisions thereof. If such payment in full is made by the Company while no such default exists or if any such payment in full is made while any default exists and all such defaults are subsequently corrected by the Company, the Company shall be entitled to have this Assignment discharged.

This Assignment is made upon the express understanding and agreement that the Lender assumes no responsibility for the performance of the Company's obligations under the Lease; shall in no event be liable to the Lessee for the failure on the part of the Company to comply with or perform any of the Company's Obligations under the Lease; and shall in no way be held to have assumed or become liable for compliance with or performance of any covenant binding upon the Company, but the Company shall continue to be bound by all such obligations and covenants.



The Company does hereby irrevocably constitute and appoint the said Lender its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, demand receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable for the Cars under the Lease with full power to settle, adjust or compromise any claim thereunder as fully as the Company could itself do, and to endorse the name of the Company on all negotiable instruments given in payment or in part payment thereof, and in its discretion, to file any claim or take any action or proceeding, either in its own name or in the name of the Company, or otherwise, which the Lender may deem necessary or appropriate to collect any and all sums which may be or become due or payable under the lease, or which may be necessary or appropriate to protect and preserve the right, title and interest of the Lender in and to such moneys and the security intended to be afforded hereby.

The Company authorizes and directs the Lender to notify the Lessee of this Assignment and, upon the occurrence of an event which with notice, lapse of time, or both would be an event of default under the terms of the Promissory Notes, to direct the Lessee to make all payments of all sums due or to become due under the Lease, including without limitation, payment of rental and payments for Cars lost, destroyed or damaged beyond repair, directly to Lender. Any such payments received by the Company after the occurrence of an event which with notice, lapse of time or both, would be an event of default under the terms of the Promissory Notes, shall be received as an agent for the Lender; shall be held in trust by the Company for the Lender; shall be delivered to the Lender in the same medium as received by the Company; shall under no circumstances at any time be commingled with any funds of the Company, and shall be forwarded to the Lender on the day of their receipt by the Company unless received too late for forwarding on such day, in which event they shall be forwarded on the next business day.

The Lender shall not be obligated to collect any of the rentals or other sums of money hereby assigned and the failure on the part of the Lender to collect the same shall not in any way affect any indebtedness or liabilities of the Company to the Lender and/or in any way affect any security therefore.

No renewal or extension of any or all of the indebtedness secured hereby shall operate to waive, alter, vary, affect or annul this Assignment or the security afforded hereby. Nothing herein contained shall operate as or be deemed to be an extension of the time of payment of the indebtedness secured hereby or to in any way affect any rights, powers or remedies of the Lender contained in the obligations evidencing such indebtedness or loan agreements regarding such indebtedness.

No delay by the Lender in exercising, or failure by the Lender to exercise, or partial or single exercise by the Lender of any right or power hereunder shall preclude any other or further exercise thereof or of any other right or power. The rights and remedies of the Lender as specified herein are cumulative and not exclusive of any other rights and remedies which the Lender may otherwise have.

This Assignment and all representations, warranties, covenants, powers and rights herein contained shall bind and shall inure to the benefit of the parties hereto and their respective successors and assigns.

The parties hereto agree that this Assignment of Lease and Rents and the acts of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each of the parties hereto has caused these presents to be executed in its corporate name and under its corporate seal by its corporate officer thereunto authorized this \_\_\_\_ day of August, 1993.

**ALLIED ENTERPRISES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DEUTSCHE CREDIT CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

SS.

On this \_\_\_\_ day of \_\_\_\_\_, 1993, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of \_\_\_\_\_, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

SS.

On this \_\_\_\_ day of \_\_\_\_\_ 1993, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of DEUTSCHE CREDIT CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

Exhibit K

ACKNOWLEDGMENT AND NOTICE OF ASSIGNMENT

To: Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, Illinois 60015

Reference is made to a Lease dated \_\_\_\_\_, 1993 (the "Lease") between Allied Enterprises, Inc. (the "Lessor") and Arkansas and Missouri Railroad Company (the "Lessee") relating to the lease of certain railcars described in the Schedule attached hereto. Words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Lease.

Lessee has been notified by Lessor, that Lessor has assigned, transferred, and granted a security interest in the Lease to Deutsche Credit Corporation (the "Lender") as collateral security for obligations of the Lessor to the Lender under a Loan and Security agreement between Lessor and Lender, dated as of August \_\_\_\_, 1993 (the "Loan Agreement").

Lessee, intending to be legally bound hereby and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Lessee, does hereby:

A. Acknowledge and consent to the assignment to Lender, for security purposes, of all Lessor's right, title, and interest, and claims and demands of Lessor in, under and to the Lease, including without limitation:

(i) to the extent set forth in the Loan Agreement and the Assignment of Lease and Rents, the immediate and continuing right to receive and collect all rental payments, casualty value payments, insurance proceeds and other payments, revenues, receipts, tenders and security now or hereafter payable to or receivable by Lessor with respect to the Railcars (as defined in the Loan Agreement) under the Lease;

(ii) to the extent set forth in the Loan Agreement and the Assignment of Lease and Rents, the right to make all waivers and amendments and to enter into any agreements relating to the Lease or any provisions thereof; and

(iii) to the extent set forth in the Loan Agreement and the Assignment of Lease and Rents, the right to take such action upon the occurrence of a default or event of default under the Lease as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which Lessor is or may be entitled to do under the Lease.

B. Acknowledge and agree that, notwithstanding the assignment for security purposes by Lessor to Lender, the Lender has not assumed and does not assume the responsibility to discharge or perform any liability, duty or obligation of Lessor to be performed under the Lease and the Lessee agrees that it shall look solely to Lessor for the discharge, performance or satisfaction of any such liability, duty or obligation.

C. Acknowledge and consent to, and hereby agrees to comply with, according to its terms, the Financial Covenant set forth in Section A.7 of the Loan Agreement.

D. Represent and warrant that the Lease and this Acknowledgment of Notice and Assignment have been duly authorized, executed and delivered by the Lessee and constitute the legal valid and binding agreement of the Lessee enforceable against the Lessee in accordance with their respective terms.

E. Represent and warrant that no default, event of default or event which with the lapse of time or giving of notice, or both, would constitute a default or event of default under the Lease has occurred and is continuing.

F. Represent and warrant that it has made no prepayment of rental to the Lessor and that no offset or deduction exists with respect to Lessee's obligation to pay any sums payable by the Lessee under and pursuant to the terms of the Lease.

G. If so directed by Lender and under payment instructions given in such direction by Lender, agree to make all payments to be made by it under the Lease directly to Lender at the following address, or such other address as Lender shall notify to Lessee in writing:

Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, Illinois 60015

H. Represent and warrant that the document attached as Exhibit A hereto is a true, correct and complete copy of the Lease as amended, that such document has not since the date of its execution and delivery been further amended or modified in any aspect and that the Lease sets forth the entire agreement between the Lessor and Lessee with respect to the subject matter thereof.

This Acknowledgement of Notice and Assignment, when accepted by Lender by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said state without regard to its conflicts of law doctrine.

**ARKANSAS AND MISSOURI RAILROAD COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTED:**

**DEUTSCHE CREDIT CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_ day of \_\_\_\_\_, 1993, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of \_\_\_\_\_, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_ day of \_\_\_\_\_ 1993, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of DEUTSCHE CREDIT CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

Exhibit L

ASSIGNMENT OF REBUILD AGREEMENT

THIS ASSIGNMENT, made as of the \_\_\_\_\_ day of August, 1993, by Allied Enterprises, Inc. (hereinafter referred to as the "Company"), a Delaware Corporation, with its office and principal place of business at 107 N. Commercial Street, Springdale, AR 72764

WITNESSETH:

The Company hereby sells, assigns, transfers and sets over unto Deutsche Credit Corporation ("Lender") under the Loan and Security Agreement by and between the Company and Lender (the "Loan Agreement") all of the Company's right, title and interest in and to that certain agreement by and between the Company and East Railroad Services Corp. (the "Rebuild Agreement" and the "Rebuilder", respectively) to modify railcars identified on Schedule 1 hereto (the "Railcars"), which are the subject of the Loan and Security Agreement, including, but not limited to, the following rights thereunder:

- (i) the right to cause the Rebuilder to perform the Rebuild Agreement to which it is a party for the benefit of Lender or its assigns;
- (ii) the right to re-assign the Rebuild Agreement;
- (iii) the right to have a nominee of the Borrower or the Lender or any other assignee perform the Rebuild Agreement;
- (iv) the right to make demand directly under the Rebuild Agreement in accordance with the terms thereof;
- (v) to the extent set forth in the Loan Agreement, the right to make all waivers and amendments and to enter into any agreements relating to the Rebuild Agreement or any provisions thereof;
- (vi) the right to take such action upon occurrence of a default or event of default under the Rebuild Agreement as shall be permitted by the Rebuild Agreement or by law;
- (vii) the right to initiate, prosecute and maintain legal proceedings directly under the Rebuild Agreement, and to compel performance by such parties of any of their respective obligations contained in the Rebuild Agreement, all without resulting in the assumption of any obligations of the Borrower under the Rebuild Agreement, any other assignee or any nominees, except such obligations which are expressly assumed in writing by the Lender, any other assignee or any nominee; provided, however, that the rights provided for herein may only be exercised upon default by Borrower.

Borrower represents and warrants that no default, event of default or event which with the lapse of time or giving of notice, or both, would constitute a default or event of default, under the Rebuild Agreement to the best of its knowledge, has occurred and is continuing.

Borrower further represents and warrants that the document attached as Exhibit A hereto is true, correct, and complete copy of the Rebuild Agreement, that such document has not since the date of its execution and delivery been amended or modified in any respect, and the Rebuild Agreement sets forth the entire agreement between the Company and the Rebuilder with respect to the subject matter thereof.

As long as the Company is not in default under the Loan Agreement, Lender agrees not to exercise the rights of the Company under the Rebuild Agreement.

This Assignment and all representations, warranties, covenants, powers and rights herein contained shall bind and shall inure to the benefit of the parties hereto and their respective successors and assigns.

The parties hereto agree that this Assignment of Rebuild Agreement and the acts of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each of the parties hereto has caused these presents to be executed in its corporate name and under its corporate seal by its corporate officer thereunto authorized this \_\_\_\_ day of August, 1993.

**ALLIED ENTERPRISES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DEUTSCHE CREDIT CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



Exhibit M

ACKNOWLEDGMENT AND NOTICE OF ASSIGNMENT

To: Deutsche Credit Corporation  
2333 Waukegan Road  
Deerfield, IL 60015

Reference is made to a Letter Agreement dated as of \_\_\_\_\_ (the "Rebuild Agreement") between Allied Enterprises, Inc. ("Allied") and East Railroad Services Corp. (the "Contractor") relating to the side height extension and painting work to be performed on certain railcars described in Schedule 1, attached hereto. Words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Rebuild Agreement.

Contractor has been notified by Allied that Allied has assigned, transferred, and granted a security interest in the Rebuild Agreement (the "Assignment") to Deutsche Credit Corporation (the "Lender") as collateral security for obligations of Allied to the Lender under a Loan and Security Agreement between Allied and Lender dated as of \_\_\_\_\_, 19\_\_\_\_ (the "Loan Agreement").

Contractor, intending to be legally bound hereby and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Contractor, does hereby:

A. Acknowledge and consent to the Assignment to Lender, all of Allied right, title and interest and claims and demands of Allied in, under and to the Rebuild Agreement, including without limitation:

- (i) the right to cause the Rebuilder to perform the Rebuild Agreement to which Allied is a party for the benefit of Lender or its assigns;
- (ii) the right to re-assign the Rebuild Agreement;
- (iii) the right to have a nominee of Allied or the Lender or any other assignee perform the Rebuild Agreement;
- (iv) the right to make demand directly under the Rebuild Agreement in accordance with the terms thereof;
- (v) to the extent set forth in the Loan Agreement and the Assignment, the right to make all waivers and amendments and to enter into any agreements relating to the Rebuild Agreement or any provisions thereof;
- (iv) the right to take such action upon occurrence of a default or event of default under the Rebuild Agreement as shall be permitted by the Agreement or by law, and to do any and all other things whatsoever which Allied is or may be entitled to do under the Rebuild Agreement; and
- (iv) the right to initiate, prosecute and maintain legal proceedings directly under the Rebuild Agreement, and to compel performance by such parties of any of their respective obligations contained in the Rebuild Agreement, all without resulting in the assumption of any obligations of Allied under the Rebuild Agreement, any other assignee or any nominees, except such obligations which are expressly assumed in writing by the Lender, any other assignee or any nominee; provided, however, that the rights provided for herein may only be exercised upon default by Allied.

B. Acknowledge and agree that, notwithstanding the Assignment, the Lender has not assumed and does not assume the responsibility to discharge or perform any liability, duty or obligation of Allied to be performed under the Rebuild Agreement and the Contractor agrees that it shall look solely to Allied for the discharge, performance or satisfaction of any such liability, duty or obligation.

C. Represent and warrant that the Rebuild Agreement and this Acknowledgment of Notice and Assignment have been duly authorized, executed, and delivered by the Contractor and constitute the legal, valid, and binding agreement of the contractor enforceable against the Contractor in accordance with their respective terms.

D. Represent and warrant that no default, event of default or event which with the lapse of time or giving of notice, or both, would constitute a default or event of default, under the Rebuild Agreement has occurred and is continuing.

E. Represent and warrant that the document attached as Exhibit A hereto is a true, correct, and complete copy of the Rebuild Agreement, that such document has not since the date of its execution and delivery been amended or modified in any respect, and the Rebuild Agreement sets forth the entire agreement between Allied and the Contractor with respect to the subject matter thereof.

F. Agree that it shall complete, and deliver to Allied and Lender a certificate in the form attached hereto as Exhibit B, as often as requested by Allied, certifying that the subject railcars have been completed pursuant to the terms of the Rebuild Agreement.

This Acknowledgment and Notice of Assignment, when accepted by Lender by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said state without regard to its conflicts of law doctrine.

**East Railroad Services Corp.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTED:**

**DEUTSCHE CREDIT CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

ordaz\agreement\allied\rebuild.egr

# **CERTIFICATE OF INSURANCE**

ISSUE DATE 09/01/92

Lincoln Insurance  
1113 Commercial Drive  
Hartford, NY 13413

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## **COMPANIES AFFORDING COVERAGE**

COMPANY LETTER A Pacific Insurance Company  
COMPANY LETTER B Phoenix Assurance Company  
COMPANY LETTER C  
COMPANY LETTER D  
COMPANY LETTER E

### **INSURED**

Arkansas Missouri Railroad Co.  
107 North Commercial  
Springdale, AR 72701

*EXHIBIT N*  
*Needs to be insured*

### **COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITHIN WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO STA	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY				GENERAL AGGREGATE \$
	COMMERCIAL GENERAL LIABILITY				PRODUCTS/COMPL/OP AGG. \$
	CLAIMS MADE OCCUR.				PERSONAL & ADV. INJURY \$
	OWNER'S & CONTRACTOR'S PROVL.				EACH OCCURRENCE \$5,000,000
A	Railroad Liability	PRR002459	9/1/92	9/1/93	MINI DAMAGE (Any one item) \$
					MTL. EXTENSE (Any one person) \$
	AUTOMOBILE LIABILITY				COMBINED TRAILER LIMIT \$
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE \$
	HYRED AUTOS				
	NON-OWNED AUTOS				
	GARAGE LIABILITY				
	EXCESS LIABILITY				EACH OCCURRENCE \$
	UMBRELLA FORM				AGGREGATE \$
	OTHER THAN UMBRELLA FORM				
	WORKER'S COMPENSATION				STATUTORY LIMITS
	AND				EACH ACCIDENT \$
	EMPLOYERS' LIABILITY				DISEASE POLICY LIMIT \$
					DISEASE - EACH EMPLOYEE \$
	OTHER				
B	Inland Marine	MCIM928735	9/17/92	9/17/93	70 Gondolas series A&M900-969 at \$2,100,000

### **DESCRIPTION OF OPERATION/LOCATION/VEHICLES/SPECIAL ITEMS**

Certificate Holder is listed as additional insured and loss payee, per contract

### **CERTIFICATE HOLDER**

Deutsche Credit

### **CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL endeavor TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE

*Charles H. [Signature]*

TOTAL P.01

EXHIBIT 0

LAW OFFICES

**CYPERT, CROUCH, CLARK & HARWELL**

111 HOLCOMB STREET

POST OFFICE BOX 1400

SPRINGDALE, ARKANSAS

72765-1400

COURTNEY C. CROUCH (1912-1975)

JAMES D. CYPERT

JAMES E. CROUCH

WILLIAM M. CLARK, JR.

CHARLES L. HARWELL

BRIAN L. SPAULDING

August 10, 1993

MAILING ADDRESS:  
POST OFFICE BOX 1400

TELEPHONE  
501/751-5222

TELECOPIER  
501/751-5777

LESLIE L. REID

STANLEY W. LUDWIG

COUNSEL

Deutsche Credit Corporation

2333 Waukegan Rd.

Deerfield, IL 60015

Re: \$1,214,400 loan by Deutsche Credit Corporation to Allied Enterprises, Inc.

Ladies and Gentlemen:

We have acted as Arkansas counsel to Allied Enterprises, Inc. (hereinafter Borrower) in connection with the transaction evidenced by the documents (defined below). We have been requested by you as the Lender to render our opinion concerning certain matters.

For purposes of this opinion, we have examined such questions of law and fact as deemed necessary or appropriate and have examined the following documents (collectively, the "Documents"):

- a. Loan Agreement dated the 10th day of August, 1993 to be executed between the Borrower and the Lender;
- b. Rebuild Agreement dated the 10th day of August, 1993 to be executed between the Borrower and the Lender.
- c. Promissory Note dated the 10th day of August, 1993 to be executed by the Borrower to the Lender.

We have further examined:

- i. A copy of a "Certificate of Incorporation" of Borrower in the State of Delaware dated the 15th day of June, 1993.
- ii. A copy of a "Certificate of Authority to Foreign Corporation" issued to Borrower by the Secretary of State of the State of Arkansas on the 13th day of July, 1993.
- iii. A certificate from the officers of the Borrower dated 24th day of June, 1993.

Based on the foregoing and subject to the qualifications set forth herein below, it is our opinion, as of this date that:

1. Borrower is a corporation duly organized, validly existing and in good standing under the law of the State of Delaware and has full power and authority to own its property and carry on its business as currently conducted in the State of Arkansas and is duly qualified to do business in the State of Arkansas.

2. Borrower is conducting its business in such a manner as to comply with all applicable laws and regulations of the United States of America and in the State of Arkansas and any subdivision thereof and of all governmental agencies and authorities of the United States of America, the State of Arkansas and any subdivision thereof where the failure to so comply would have a material adverse effect on the business, present or perspective, or the operations, property, assets or condition, financial or otherwise, of Borrower.

3. Borrower has full power and authority to execute, deliver and perform this agreement, the Rebuild Agreement, and all of the documents referred to herein which Borrower is a party and the Promissory Note.

4. The Rebuild Agreement and the Promissory Note referred to herein to which Borrower is to be a party have been duly authorized by the Borrower and when executed and delivered by Borrower and assuming due authorization, execution, and delivery by the other parties hereto will constitute legal, valid, and binding obligations of Borrower enforceful against it and in accordance with their respective terms.

5. To the best our knowledge, no authorization or approval or other actions by, and no notice filing with any governmental authority or regulatory body is required for due execution, delivery and performance by Borrower of the Loan Agreement, the Rebuild Agreement, and the Notes to which Borrower will be a party; provided we give no opinion as to any authority or filing required with the Interstate Commerce Commission.

6. To the best of our knowledge, neither the execution, delivery or performance by Borrower of the Loan Agreement, Rebuild Agreement, and the Promissory Notes referred to herein to which Borrower is or will be a party, nor compliance with the terms and provisions thereof, conflicts with or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation in the State of Arkansas or the charter documents, as amended, or by-laws, as amended, of Borrower or any order, writ, injunction or decree of any court or governmental authority against Borrower in the State of Arkansas or by which it or any of its properties is bound in the State of Arkansas, or of any indenture, mortgage or contract or other agreement or instrument to which Borrower is a party or by which it or any of its properties is bound, or constitutes or will constitute a default hereunder or will

result in the imposition of any lien not permitted hereby on any of its properties.

7. We hereby certify that the principal place of business of Borrower as of date hereof is 107 North Commercial Street, Springdale, Arkansas, 72764.

In rendering that the foregoing opinions, we assume:

- i. The genuineness of the signatures not witnessed; the authenticity of document submitted as originals; and the conformity to originals of documents submitted as copies.
- ii. The legal capacity of natural persons executing the documents.
- iii. That the documents actually described contain the mutual understanding of the parties and that there are no oral or written statements or agreements that modify, amend, or vary, or purport to modify, amend, or vary any term of the documents.
- iv. The accuracy and correctness of all representations, certificates and documents provided to us by the Borrower.

Should any of the information, documents, certificates, or facts that were presented to us by the officers be untrue or inaccurate, than that might materially alter the opinion expressed above. We advise you that no special investigation of relevant facts or circumstances have been made. If you have any reason to believe that any of the information relied upon in rendering this opinion is incorrect, inaccurate, or untrue, in any material respect, please advise us in writing immediately.

The opinions set forth above are subject to the following qualifications and limitations:

- a. The enforceability of documents may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, other similar laws relating to or affecting the rights of creditors generally; and
- b. The enforceability of documents is subject to general principles of equity and some of the remedies provided for and set forth above may not be enforceable under Arkansas law.
- c. This opinion assumes that on the date the Promissory Note is executed the highest lawful rate that may be charged as interest in Arkansas is 8% per anum.

We hereby advise you that the opinions stated herein are based upon our knowledge of Arkansas law and any applicable federal law. We are qualified to practice law only in the State of Arkansas and we do not purport to be experts on or to express any opinion

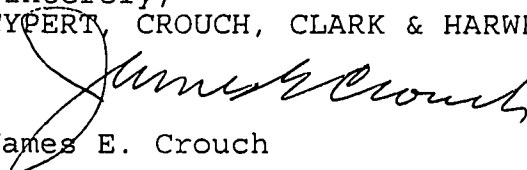
concerning any law other than the law of the State of Arkansas and applicable federal law.

We do not undertake to advise of any changes this relating to the above matters which may appear after this date or the date of the Certificates referred to above.

This opinion letter is of a confidential nature, solely for the use and benefit of Deutsche Credit Corporation in connection with the loan referred to above and is not to be revealed to or relied upon by any other party. Nor is it to be otherwise quoted without written notice to and written consent from this firm.

Kindest regards.

Sincerely,  
CYPERT, CROUCH, CLARK & HARWELL



James E. Crouch

JEC/tgv

Exhibit P

\_\_\_\_ Acquisition Advance Certificate    Date: \_\_\_\_\_

X Modification Advance Certificate    Date: \_\_\_\_\_

CURRENT MARK	CURRENT NUMBER	NEW MARK	NEW NUMBER	ADVANCES PREVIOUSLY MADE	AMOUNT OF THIS ADVANCE
PLE	47000				
PLE	47002				
PLE	47004				
PLE	47005				
PLE	47006				
PLE	47007				
PLE	47010				
PLE	47012				
PLE	47013				
PLE	47014				
PLE	47015				
PLE	47018				
PLE	47019				
PLE	47021				
PLE	47022				
PLE	47023				
PLE	47024				
PLE	47025				
PLE	47026				
PLE	47028				
PLE	47031				
PLE	43032				
PLE	47033				
PLE	43037				
PLE	47038				
PLE	47040				
PLE	47042				



CURRENT MARK	CURRENT NUMBER	NEW MARK	NEW NUMBER	ADVANCES PREVIOUSLY MADE	AMOUNT OF THIS ADVANCE
PLE	47045				
PLE	47046				
PLE	47047				
PLE	47048				
PLE	47049				
PLE	47052				
PLE	47054				
PLE	47055				
PLE	47058				
PLE	47062				
PLE	47063				
PLE	47074				
PLE	47078				
PLE	47080				
PLE	47081				
PLE	47083				
PLE	47085				
PLE	47086				
PLE	47088				
PLE	47091				
PLE	47093				
PLE	47095				
PLE	47096				
PLE	47097				
PLE	47098				
PLE	47099				
PLE	47101				
PLE	47104				
PLE	47107				
PLE	47110				
PLE	47111				

CURRENT MARK	CURRENT NUMBER	NEW MARK	NEW NUMBER	ADVANCES PREVIOUSLY MADE	AMOUNT OF THIS ADVANCE
PLE	47123				
PLE	47126				
PLE	47128				
PLE	47129				
PLE	47130				
PLE	47134				
PLE	47135				
PLE	47136				
PLE	47087				
----- TOTALS				\$	\$
-----				-----	-----

The undersigned certified that he/she is the \_\_\_\_\_ of Allied Enterprises, Inc., the Borrower; that this Certificate delivered pursuant to Section A.2(1)(b), or A.3(1)(A), as applicable, of the Loan and Security Agreement by and between Allied enterprises, Inc. and Deutsche Credit Corporation, as Lender, dated August \_\_\_\_\_, 1993 (the "Loan and Security Agreement"), is true, accurate and complete as of the date hereof; that the totals set forth above are true and accurate and that the rail cars set forth above are being acquired free and clear of any and all liens or encumbrances and are being delivered or have been delivered to East Railroad Services Corp. for certain modification thereto; or that the railcars set forth above, which have previously been acquired free and clear of any and all liens and encumbrances, have been completely and satisfactorily modified, and have been delivered to the Arkansas and Missouri Railroad, who is to lease the railcars from the undersigned Borrower; and that the funds to be advanced pursuant to this certificate are within the maximum permitted under the Loan and Security Agreement.

IN WITNESS WHEREOF, I have set my hand this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit Q**

**CERTIFICATION**

Pursuant to the Loan and Security by and between the undersigned, Allied Enterprises, Inc. (the "Borrower"), and Deutsche Credit Corporation (the "Lender"), dated \_\_\_\_\_, 1993, (the "Loan Agreement"), the Borrower hereby certifies, as of the date hereof, the following:

(i) the amount(s) set forth in the invoice(s) attached hereto are due and owing by the Borrower under the Rebuild Agreement and have not been included in a prior invoice; or they have been paid by Borrower, as evidenced by the attached invoices marked "Paid-in-Full", or by copies of cancelled checks to paid such invoices, which are also attached hereto;

(ii) all amounts which have been the subject of prior invoices under the Rebuild Agreement have been paid in full; and

(iii) Borrower is not, in default with respect to any of its obligations under any of the Promissory Notes or this Agreement, or of the Rebuild Agreement, nor has any event occurred which, but for the lapse of time, or any giving of notice, or both, would constitute such default.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**ALLIED ENTERPRISES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit R

WAIVER

The undersigned has no right, title or interest in the following railcars (which may be described on a separate schedule, and all of which are made a part hereof), which the undersigned has modified pursuant to that certain Letter Agreement dated \_\_\_\_\_, 19\_\_\_\_, between the undersigned and Allied Enterprises, Inc., and hereby waives any and all liens it may have under the above referenced Agreement, or for any other repair, refurbishment done or other enhancements or value added to the railcars described below; the undersigned also, hereby waives any and all mechanics' or materialmens' liens it may have on the above referenced railcars, for any reason whatsoever.

Railcars Subject to this Release

CAR MARK

CAR NUMBER

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit S

**CERTIFICATE**

Pursuant to that certain Loan and Security Agreement dated as of August \_\_\_\_\_, 1993 (the "Agreement") between ALLIED ENTERPRISES, INC. (the "Borrower") and DEUTSCHE CREDIT CORPORATION ("Lender"), the undersigned hereby certifies to Lender, to the best of the undersigned's knowledge and belief that the representations and warranties of Borrower contained in the Agreement and of each party in any documents or certificates delivered pursuant to the Agreement shall be and are true and correct on and as of the Modification Advance Closing (as defined in the Agreement) with the same effect as though made on and as of the Modification Advance Closing, and as of the Modification Advance Closing there shall be and is no default under any leases with respect to the Railcars (as defined in the Agreement), or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the \_\_\_\_\_ day of August, 1993.

**ALLIED ENTERPRISES, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT

Certificate of Acceptance

I have been appointed as the duly authorized representative of Arkansas and Missouri Railroad Company for the purpose of inspecting and accepting the Cars (as defined in the Lease). In such capacity, I do hereby certify that with respect to the Cars described below:

1. Each Car has been inspected and is in good order.
2. Based on my determination that each Car is in compliance with all applicable specifications, each Car is hereby accepted by [Lessee] for all purposes of the Lease.

TYPE OF EQUIPMENT:

DATE OF ACCEPTANCE:

NUMBER OF CARS:

CAR MARK AND NUMBERS:

ARKANSAS AND MISSOURI  
RAILROAD COMPANY

\_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
 ) SS:  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, says that he is \_\_\_\_\_ of ALLIED ENTERPRISES, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

STATE OF \_\_\_\_\_ )  
 )  
 ) SS:  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, says that he is \_\_\_\_\_ of ARKANSAS AND MISSOURI RAILROAD COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

**Exhibit U**

**CERTIFICATE OF COMPLETION**

The undersigned hereby certifies, as of the date hereof, that pursuant to the terms, conditions and specifications set forth in the letter agreement by and between Allied Enterprises, Inc. ("Allied") and the undersigned (the "Rebuilder"), dated \_\_\_\_\_, (the "Rebuild Agreement"), the following railcars have been completely and satisfactorily modified in accordance with the Rebuild Agreement, that the said railcars have been painted to reflect the new corresponding car marks and numbers, and that said modification was completed on the following date(s) with respect to the applicable railcar:

OLD CAR MARK	OLD CAR NUMBER	NEW CAR MARK	NEW CAR NUMBER	DATE OF COMPLETION OF MODIFICATION
--------------	----------------	--------------	----------------	------------------------------------

- 1.
- 2.
- 3.
- 4.
- 5.

If the railcars set forth above are not the first five (5) railcars modified under the Rebuild Agreement, Rebuilder hereby certifies that such subsequent railcars have been modified in substantially the same manner as the first five modified railcars. Nothing in this Certificate shall be construed as modifying in any respect the obligations, representations or warranties of East as set forth in the rebuild Agreement.

**EAST RAILROAD SERVICES CORP.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT V**

**QUARTERLY COVENANT COMPLIANCE CERTIFICATE**

Allied Enterprises, Inc. (the "Borrower") HEREBY CERTIFIES THAT this Certificate is furnished pursuant to Section A.4(17) of the Loan and Security Agreement dated as of \_\_\_\_\_ by and between the Borrower and Deutsche Credit Corporation, (the "Loan Agreement"). Unless otherwise defined herein, the terms used in the Certificate have the meaning assigned to them in the Loan Agreement.

As required by Section A.4(17) of the Loan Agreement, consolidated financial statements of the Borrower for the year ending \_\_\_\_\_, 19\_\_\_\_ (the "Financial Statements"), prepared in accordance with generally accepted accounting principles consistently applied, accompany this Certificate. The consolidated financial statements of the Lessee also accompany this Certificate, to evidence compliance with Section A.7 of the Loan Agreement. The Financial Statements fairly presented the consolidated financial position of the Borrower as at the date thereof and the results of operations of the Borrower for the period covered, and when reviewed in conjunction with the consolidated financial statements of Lessee shall reflect compliance with Section A.7 of the Loan Agreements.

The activities of the Borrower during the period covered by that Financial Statements have been reviewed by the Chief Financial Officer or by employees or agents under his immediate supervision.

The Borrower is in compliance with the Loan Agreement.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Allied Enterprises, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT W

ANNUAL COVENANT COMPLIANCE CERTIFICATE

Allied Enterprises, Inc. (the "Borrower") HEREBY CERTIFIES THAT this Certificate is furnished pursuant to Section A.4(17) of the Loan and Security Agreement dated as of \_\_\_\_\_ by and between the Borrower and Deutsche Credit Corporation, (the "Loan Agreement"). Unless otherwise defined herein, the terms used in the Report have the meaning assigned to them in the Loan Agreement.

As required by Section A.4(17) of the Loan Agreement, consolidated financial statements of the Borrower for the year ending \_\_\_\_\_, 19\_\_ (the "Financial Statements"), prepared in accordance with generally accepted accounting principles consistently applied, accompany this Certificate. The consolidated financial statements of the Lessee also accompany this Certificate, to evidence compliance with Section A.7 of the Loan Agreement. The Financial Statements fairly present the consolidated financial position of the Borrower as at the date thereof and the results of operations of the Borrower for the period covered, and when reviewed in conjunction with the consolidated financial statements of Lessee shall reflect compliance with Section A.7 of the Loan Agreements.

The Borrower hereby certifies it is in compliance with the financial covenants contained in the Loan Agreement as of the date hereof, the activities of the Borrower during the period covered by the Financial Statements have been reviewed by the undersigned who acts as outside independent auditors to the Borrower.

The Borrower is in compliance with the Loan Agreement.

WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

[NAME OF AUDITORS]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit X

MEMORANDUM OF LEASE AGREEMENT

1. Lease Agreement is made and entered into as of \_\_\_\_\_, 19\_\_\_\_, by and between Allied Enterprises, Inc., a Delaware corporation (hereinafter, "Allied") and Arkansas and Missouri Railroad Company (hereinafter, "A and M").

2. Subject to the terms and condition of the Lease Agreement, Allied agrees to lease to A and M and A and M agrees to (and hereby does) lease from Allied sixty-nine (69) used fifty two (52') foot, one hundred (100) ton gondola railcars bearing \_\_\_\_\_ reporting marks as more fully set forth on Schedule A attached hereto.

3. The addressees of the parties are as follows:

Allied Enterprises, Inc.  
107 N. Commercial Street  
Springdale, AR 72764

Arkansas and Missouri Railroad Company  
107 N. Commercial Street  
Springdale, AR 72764

4. The term of the Lease Agreement is \_\_\_\_\_ years, commencing \_\_\_\_\_, 19\_\_\_\_. The initial term hereof expires \_\_\_\_\_, 19\_\_\_\_.

5. The terms and provisions of this Lease Agreement are more particularly set forth in a Lease Agreement of even date by and between Allied and A and M.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of the Lease Agreement to be executed as of the day and year first above written.

Allied Enterprises, Inc.  
(LESSOR)

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Arkansas and Missouri Railroad Company  
(LESSEE)

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF                    )  
                              )ss  
COUNTY OF                )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn that he/she is the \_\_\_\_\_ of Allied Enterprises, Inc. respectively, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF ARKANSAS)  
                              )ss  
COUNTY OF                )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn that he/she is the \_\_\_\_\_ of the Arkansas and Missouri Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public